



# Freedom of expression in Europe

Case-law concerning Article 10  
of the European Convention on Human Rights



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# **Freedom of expression in Europe**

Case-law concerning Article 10  
of the European Convention on Human Rights

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The opinions expressed in this publication should not be regarded as placing upon the legal instruments mentioned in it any official interpretation capable of binding the governments of member states, the Council of Europe's statutory organs or any organ set up by virtue of the European Convention on Human Rights.

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# Contents

## I. Introduction

## II. The case-law relating to freedom of expression

### A. Media freedom

- 1. Judgments of the Court ..... 11
- 2. Decisions and reports of the Commission and the Court ..... 43

### B. Regulating broadcasting

- 1. Judgments of the Court ..... 61
- 2. Decisions and reports of the Commission and the Court ..... 66

### C. Access to information

- 1. Judgments of the Court ..... 75
- 2. Decisions of the Commission and the Court ..... 76

### D. Commercial statements

- 1. Judgments of the Court ..... 79
- 2. Decisions of the Commission and the Court ..... 82

### E. Protection of the general interest

- 1. Judgments of the Court ..... 85
- 2. Decisions and reports of the Commission and the Court ..... 95



**F. Protection of other individual rights**

1. Judgments of the Court ..... 105  
2. Decisions of the Commission and the Court..... 117

**G. Maintaining the authority and impartiality of the judiciary**

1. Judgments of the Court ..... 122  
2. Decisions of the Commission and the Court..... 124

**III. Main judgments, decisions and reports**

1. Judgments of the European Court of Human Rights..... 127  
2. Decisions and reports of the European Commission  
and Court of Human Rights ..... 149

**Index**



# I. Introduction

This document is an update of *Freedom of Expression in Europe*, Human rights files No. 18 (revised), published by Council of Europe Publishing in 2002. It presents, at 31 December 2005:

- comments on the case-law relating to freedom of expression. Only cases directly and primarily concerning Article 10 are discussed. It must be stressed, however, that Article 10 must be read in the light of all the Convention provisions which may either tend to restrict its scope (Articles 15, 16 and 17, for example), or guarantee protection of a more specific kind (Articles 8, 9 and 11, for example);
- references to final judgments of the European Court of Human Rights (part A) and to the main decisions and reports of the European Court and European Commission of Human Rights (part B) concerning Article 10 of the European Convention on Human Rights in general and media freedom in particular.

All of the judgments, decisions and reports are available on the Internet at <http://hudoc.echr.coe.int/> (HUDOC).

The new European Court of Human Rights came into operation on 1 November 1998, with the entry into force of Protocol No. 11 to the European Convention on Human Rights. The Court sits permanently and replaces the former two supervisory organs of the Convention (Court and Commission).



## II. The case-law relating to freedom of expression

Article 10 of the European Convention on Human Rights (hereafter called the Convention) is devoted to freedom of expression and freedom of information. The Convention was signed on 4 November 1950, entered into force on 3 September 1953 and has been ratified by all 46 member states of the Council of Europe.<sup>1</sup> It reads as follows:

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.

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 of the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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1. Monaco ratified the Convention on 30 November 2005.



There is a substantial body of European Court and European Commission of Human Rights (hereafter “Court” and “Commission”) case-law regarding this article.<sup>2</sup> The Court has described freedom of expression as “one of the basic conditions for the progress of democratic societies and for the development of each individual”<sup>3</sup>.

The Court also held in the *Ekin Association* case that the rights recognised by Article 10 of the Convention are valid “regardless of frontiers”.<sup>4</sup> So the existence of regulations<sup>5</sup> relating specifically to publications of foreign origin would seem, in the Court’s view, “to clash head on with the wording of paragraph 1 of Article 10 of the Convention” (§62). While noting that the particular circumstances that prevailed in 1939 may have justified stricter controls on foreign publications, the Court said that continuing to apply such a discriminatory practice was “difficult to defend” (§62).

Under the Convention, freedom of expression and information is not absolute. The state may interfere with that freedom in certain circumstances (irrespective of the medium through which opinions, information and ideas are expressed).

Article 10 §2 provides that, to be permissible, any restriction on freedom of expression must pursue one of the aims recognised as legitimate – national security, territorial integrity or public safety, protection of health or morals, prevention of disorder or crime, protection of the reputation or rights of others, prevention of the disclosure of information received in confidence or maintenance of the authority and impartiality of the judiciary.

It is worth noting in this context the relationship between the third sentence of Article 10 §1 (“this Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”) and §2. The Court has said that the purpose of the third sentence is:

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2. See in particular the summary, p. 127 ff. To this “Strasbourg” case-law should be added the decisions taken at national level in those member States where the Convention is self-executing.
  3. *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A No. 24 § 49.
  4. *Ekin Association v. France*, No. 39288/98, Reports 2001-VIII, § 62.
  5. Section 14 of the Act of 29 July 1881 amended by the Decree of 6 May 1939.



to make it clear that States are permitted to regulate by a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects ... Technical aspects are undeniably important, but the grant or refusal of a licence may also be made conditional on other considerations, including such matters as the nature and objectives of a proposed station, its potential audience at a national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments. This may lead to interferences whose aims will be legitimate under the third sentence of paragraph 1, even though they do not correspond to any of the aims set out in paragraph 2. The compatibility of such interferences must nevertheless be assessed in the light of the other requirements of paragraph 2.<sup>6</sup>

The existence of a legitimate aim is not sufficient for an interference to be found compatible with the Convention, however. Any restriction on freedom of expression must also be prescribed by law. For example, the Court concluded that Article 10 had been infringed in a case in which it found that there was no legal basis for the restrictions imposed on the applicant, who wanted access to reading matter, radio and television, or for interference with exercise of his right to receive information during his psychiatric treatment and confinement.<sup>7</sup> In the *Hashman and Harrup* case, the Court noted that the expression “to be of good behaviour” – that is, not to behave *contra bonos mores* (defined in English law as behaviour which is “wrong rather than right in the judgment of the majority of contemporary fellow citizens” – was particularly imprecise, and did not give the applicants sufficiently clear guidance as to how they should behave in future.<sup>8</sup> In the *Gawęda* case<sup>9</sup> the Court held that the interpretation given by the Polish courts to a ministerial ordinance on the registration of periodicals introduced new criteria which could not be foreseen on the basis of the provisions applicable in this area. This is because the ordinance in

6. *Informationsverein Lentia and Others v. Austria*, judgment of 24 November 1993, Series A No. 276, §32.

7. *Herczegfalvy v. Austria*, judgment of 24 September 1992, Series A No. 244.

8. *Hashman and Harrup v. the United Kingdom* [GC], No. 25594/94, Reports 1999-VIII.



question stipulated that registration could be refused if it would be “inconsistent with the real state of affairs”. The national courts inferred from this notion the power to refuse registration where they considered that the title of a periodical conveyed an essentially false picture. According to the Court, such an interpretation would require a legislative provision clearly authorising it. That was not the case in this instance. The Court concluded that the law applicable was not formulated with sufficient precision to enable the applicant to regulate his conduct.

Lastly, any restriction on freedom of expression must be “necessary in a democratic society”. Under the Court’s case-law, the adjective “necessary” implies “a pressing social need”. The member states have some discretion (“margin of appreciation”) in assessing the existence of such a need. That margin is subject to European review, however, the extent of which will vary according to the case. In this connection, the Court has stated:

Where there has been an interference in the exercise of the rights and freedoms guaranteed in paragraph 1 of Article 10, the supervision must be strict, because of the importance of the rights in question; the importance of these rights has been stressed by the Court many times. The necessity for restricting them must be convincingly established.<sup>10</sup>

In exercising its power of review, the Court assesses the proportionality of a restriction on freedom of expression to the aim pursued. Any interference disproportionate to the legitimate aim pursued will not be deemed “necessary in a democratic society” and will thus contravene Article 10 of the Convention.

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9. *Gawęda v. Poland* judgment, No. 26229/95, Reports 2002-II. See also the *Karademirci* case, in which the Court found that Article 10 had been violated, considering that the applicants could not reasonably have foreseen that their statements would come within the scope of the Act in issue, given that in the past this Act had been interpreted restrictively by the domestic court. (*Karademirci and Others v. Turkey*, Nos. 37096/97 and 37101/97, Reports 2005-...). The Court has also held that neither the conviction nor sentence of those involved in the publication of books could be deemed to be legal on the basis of the Prevention of Terrorism Act; see *Ünsal Öztürk v. Turkey*, No. 29365/95, judgment of 4 October 2005.
10. *Autronic AG v. Switzerland*, judgment of 22 May 1990, Series A No. 178, § 61. See also *Worm v. Austria*, judgment of 29 August 1997, Reports 1997-V, § 47.



We shall now look at the application of these general principles to cases concerning freedom of expression.



## A. Media freedom

### 1. Judgments of the Court

The Court first dealt with an issue relating to Article 10 in 1960, in the *De Becker* case concerning lifelong prohibition on carrying on the occupations of journalist and author. After a 1961 change in Belgian law to the victim's advantage, the Court decided there was no point in continuing the case and struck it off its list.<sup>11</sup>

In the *Engel and others* case the Court found, in June 1976, that a disciplinary sanction imposed on Dutch soldiers for publishing articles that undermined military discipline was intended not to deprive them of their freedom of expression but to punish abuse of that freedom, and therefore did not amount to a violation of Article 10.<sup>12</sup>

The Court delivered its first judgment relating to freedom of expression and information in the press in the *Sunday Times (No. 1)* case. In this case, the Court held, in April 1979, that there had been a violation of Article 10 by reason of an injunction restraining publication of an article concerning a medical drug and the litigation about its use. The injunction, based on then English law on contempt of court, was not found to be “necessary in a democratic society”.<sup>13</sup>

In the *Barthold* case, the Court held, in March 1985, that the prohibitions on a German veterinary surgeon – under the Unfair Competition Act

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11. *De Becker v. Belgium*, judgment of 27 March 1962, Series A No. 4.

12. *Engel and others v. the Netherlands*, judgment of 8 June 1976, Series A, No. 22.

13. *Sunday Times (No. 1) v. the United Kingdom*, judgment of 26 April 1979, Series A No. 30, §65.



and the Rules of Professional Conduct – from making certain statements in the press took no account of freedom of expression.<sup>14</sup>

In the *Lingens* judgment (July 1986), the Court clarified the scope of these principles with regard to the press:

Whilst the press must not overstep the bounds set, *inter alia*, for the “protection of the reputation of others”, it is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them.<sup>15</sup>

According to the Court, “freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders.” In this context:

the limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance (§42).

In defamation cases the Court has deemed it necessary to distinguish between facts and value judgments. “The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof” (§46).

On this basis, the Court found, for example, that the fine imposed on the applicant for defaming a politician in a newspaper article (Article 111 of the Austrian Criminal Code) was an unjustified interference with his freedom of expression and information as guaranteed by Article 10.

In the *Barfod* case, the Court found (February 1989) that the applicant’s conviction for defaming two lay judges on account of their judgment in a sensitive case with political connotations did not violate Article 10. The Court did, however, stress “the great importance of not discouraging members of the public, for fear of criminal or other sanctions, from voicing their opinions on issues of public concern”.<sup>16</sup>

14. *Barthold v. the Federal Republic of Germany*, judgment of 25 March 1985 Series A No. 90.

15. *Lingens v. Austria*, judgment of 8 July 1986, Series A No. 103, §41.



In May 1990, the Court gave judgment in the *Weber* case, in which a Swiss journalist had been convicted of disclosing information on a current case at a press conference, in breach of the investigative confidentiality guaranteed by the Canton of Vaud code of criminal procedure. The Court concluded that the conviction contravened Article 10 in so far as it resulted in an interference with freedom of expression which was not “necessary in a democratic society” for the intended legitimate purpose. The Court noted that the information had already been disclosed at a previous press conference. As the facts were already known to the public, there was no longer any interest in keeping them secret.<sup>17</sup>

In the *Oberschlick (No. 1)* case, the Court decided, in May 1991, that there had been a violation of Article 10. The case was concerned with a libel action against the applicant by an Austrian politician and the applicant’s subsequent conviction. The Court concluded that there had been a violation of Article 10 as the applicant’s statements had been value judgments and the interference had therefore not been necessary in a democratic society.<sup>18</sup>

In November 1991, two applications were brought before the Court against the United Kingdom concerning temporary injunctions imposed in July 1986 on the *Observer* and *Guardian* newspapers, and subsequently on *The Sunday Times*, prohibiting them from publishing or disclosing extracts from *Spycatcher*, the memoirs of a former member of the British Security Services.

The Court held in both cases that there had been a violation of Article 10: the interference had not been “necessary” since the confidentiality of the contents of the book had been nullified by its publication in the United States. In the *Observer and Guardian* case<sup>19</sup> this amounted to a violation in the second period (July 1987 to October 1988), but not in the first (July 1986 to July 1987). In respect of the first period (when the manu-

16. *Barfod v. Denmark*, judgment of 22 February 1989, Series A No. 149, §29.

17. *Weber v. Switzerland*, judgment of 22 May 1990, Series A No. 177.

18. *Oberschlick v. Austria (No. 1)*, judgment of 23 May 1991, Series A No. 204.

19. *The Observer and Guardian Newspapers Ltd v. the United Kingdom*, judgment of 26 November 1991, Series A No. 216.



script had not yet been published), it was held that it was not clear that the need to satisfy the public's concern to know the truth outweighed the need to protect national security. In the second case, *Sunday Times (No. 2)*, the Court held that the imposition of injunctions by the House of Lords was in violation of the applicant's rights under Article 10 of the Convention.<sup>20</sup>

In the *Castells* judgment, in April 1992, the Court held that there had been a violation of Article 10. The applicant, a Basque militant and member of the Spanish Parliament, had been convicted of insulting the Government by publishing an article accusing the Government of supporting or tolerating attacks on Basques by armed groups. In this connection, the Court made the following observations:

The pre-eminent role of the press in a State governed by the rule of law must not be forgotten ... Freedom of the press affords the public one of the best means of discovering and forming an opinion on the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society<sup>21</sup>.

In June 1992, the Court concluded that there had been a violation of Article 10 in the *Thorgeir Thorgeirson* case, in which the applicant was ordered to pay a fine following the publication in a daily newspaper of two articles alleging police brutality. The Court held that the interference was not proportionate to the legitimate aim of "protecting the reputation of others". Whilst the press must not overstep certain limits, it is nevertheless incumbent on it to impart information and ideas on matters 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.<sup>22</sup>

In the *Schwabe* judgment of August 1992, the Court concluded there had been a violation of Article 10, as the interference could not be

20. *Sunday Times v. the United Kingdom (No. 2)*, judgment of 26 November 1991, Series A No. 217.

21. *Castells v. Spain*, judgment of 23 April 1992, Series A No. 236, §43.

22. *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992, Series A No. 239, §§59-70.



regarded as “necessary in a democratic society for the protection of the reputation of others”. The applicant had been convicted of defamation after reproaching a political figure with a criminal offence for which the sentence had already been served.<sup>23</sup>

In September 1994, the Court delivered a judgment finding a violation of Article 10 in the *Jersild* case, in which a journalist had been convicted by the Danish domestic courts for granting an interview to a group of young people in the course of which they had made racist remarks. In the Court’s view, the purpose of the report could not objectively be regarded as having been to propagate racist ideas and opinions:

[...] the methods of objective and balanced reporting may vary considerably depending among other things on the media in question. It is not for this Court, nor 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.<sup>24</sup>

According to the Court,

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 (§35).

In a judgment delivered in December 1994 in the *Vereinigung Demokratischer Soldaten Österreichs and Gubi* case, the Court found that the two applicants’ freedom of expression had been interfered with. The Ministry of Defence had refused permission for the magazine *Der Igel* to be distributed to soldiers in barracks, a prohibition which the Court did not consider necessary in a democratic society and found disproportionate to the defence of order, the legitimate aim pursued by the ministry.<sup>25</sup>

In the *Vereinigung Weekblad Bluf!* judgment, delivered in February 1995, the Court found unanimously that Article 10 had been breached. The sei-

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23. *Schwabe v. Austria*, judgment of 28 August 1992, Series A No. 242-B.

24. *Jersild v. Denmark* judgment of 23 September 1994, Series A No. 298, §31.



zure and withdrawal from circulation, after publication of a classified article relating to the Internal Security Service, of an issue of the magazine distributed by the applicant association was a disproportionate interference with freedom of expression. After the seizure, a reprint had been made and 2 500 copies distributed. As the information had thus been made available to a large number of people, its protection as a state secret was no longer justified from the point of view of Article 10<sup>26</sup>.

In the *Prager and Oberschlick* judgment of April 1995 the Court concluded that a journalist's and a publisher's conviction of defaming a judge by publishing critical comments did not constitute a violation of Article 10. Despite its "pre-eminent" role in a state governed by the rule of law, the press must keep within certain limits. The applicants' very harsh criticism of the judge's personal and professional integrity was lacking in good faith and not in keeping with the rules of journalistic ethics. The Court held that the interference with freedom of expression, given the circumstances of the case and the margin of appreciation enjoyed by states, was not disproportionate to the goal of protecting the reputation of others and maintaining the authority of the judiciary. Hence the interference could be considered necessary in a democratic society.<sup>27</sup>

In a judgment delivered in the *Tolstoy Miloslavsky* case in July 1995 the Court found unanimously that there had been disproportionate interference and hence a violation of Article 10. The case concerned an injunction and an award of £1.5 million in damages for defaming the warden of a private school by accusing him of past war crimes. The Court held that the amount of damages, allowed by the then domestic law, could not be considered necessary for the protection of the reputation or rights of others.<sup>28</sup>

25. *Vereinigung Demokratischer Soldaten Österreichs and Gubi v. Austria*, judgment of 19 December 1994, Series A No. 302. In February 1997, however, the Commission found that a conviction for incitement to disregard military laws was not in violation of Article 10 as its legitimate aim was to defend order and prevent crime. See Application No. 23697/94, *R. Saszmann v. Austria*, Decision of 27 February 1997.

26. *Vereiniged Weekblad Bluf! v. the Netherlands*, judgment of 9 February 1995, Series A No. 306-A.

27. *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A No. 313.

28. *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A No. 316-B.



In March 1996 the Court found that there had been a violation of Article 10 in the *Goodwin* case, which concerned an order requiring the applicant – a journalist – to disclose his sources of information. The Court found that “protection of journalistic sources is one of the basic conditions for press freedom”. The importance of this protection was stressed by many national codes of ethics, by a conference of media ministers resolution on journalistic freedoms and human rights,<sup>29</sup> and by a European Parliament resolution on the confidentiality of journalists’ sources.<sup>30</sup> Only “an overriding requirement in the public interest” (§39) could justify interference with the protection of sources. In the *Goodwin* case, neither the disclosure order nor the fine for contempt of court was justified under Article 10, §2.<sup>31</sup>

In February 1997, the Court found a violation of Article 10 after two journalists had been convicted of defaming several appeal court judges. Reiterating the broad principles of the case-law mentioned above, the Court pointed out that “journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation”.<sup>32</sup>

In this case the accusations published by the journalists amounted to an opinion “whose truth, by definition, [was] not susceptible of proof” (§47). The Court pointed out, however, that an opinion could be considered excessive, notably in the absence of any factual basis, circumstances by no means verified in that case. The applicants’ conviction was therefore unjustifiable under Article 10, §2.

In the *Oberschlick (No. 2)* case of July 1997, the Court was to confirm this finding. Here, a journalist had been convicted of insult. In an article commenting on a speech delivered by a politician, he had called the man an “idiot” (*Trottel*). The Court’s view was that the politician had “clearly

29. Adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, 7-8 December 1994).

30. 18 January 1994, OJEC N° C 44/34.

31. *Goodwin v. the United Kingdom*, judgment of 27 March 1996, Reports 1996-II. Although the Court has not explicitly taken a position on whether or not the “negative right” to freedom of expression is protected by Article 10, §1, the Commission clearly asserted this guarantee in its report. See Application No. 17488/90, *Goodwin v. United Kingdom*, report of 1 March 1994, §48.

32. *De Haes and Gijssels v. Belgium*, judgment of 24 February 1997, Reports 1997-I, §46.



intended to be provocative and consequently to arouse strong reactions".<sup>33</sup>

It therefore held: "the applicant's words ... may certainly be considered polemical, [but] they did not on that account constitute a gratuitous personal attack as the author provided an objectively understandable explanation for them derived from the politician's speech ..." (§33). The word "idiot" "[did] not seem disproportionate to the indignation knowingly aroused" (§34) by the politician in his speech. The conviction of the journalist was therefore in breach of Article 10.

In the *Worm* case, in August 1997, the Court held that fining a journalist for publishing an article likely to influence the outcome of criminal proceedings involving a former minister was not in breach of Article 10:

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.<sup>34</sup>

In *Worm* the Court held that the applicant's article, being likely to influence the outcome of the trial, had overstepped the bounds imposed in the interests of proper administration of justice.

In August 1998, the Court found that there had been a violation of Article 10 in the case of *Hertel*, in which the applicant had been prohibited from publishing articles on the health dangers of microwave ovens. Noting that the prohibition measures contested were disproportionate, the Court found:

The effect of the injunction was ... partly to censor the applicant's work and substantially to reduce his ability to put forward in public views

33. *Oberschlick v. Austria* (No. 2), judgment of 1 July 1997, Reports 1997-IV, §31.

34. *Worm v. Austria*, judgment of 27 August 1997, Reports 1997-V, §50. Article 6, §1, of the Convention stipulates that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."



which have their place in a public debate whose existence cannot be denied. It matters little that his opinion is a minority one and may appear to be devoid of merit since, in a sphere in which it is unlikely that any certainty exists, it would be particularly unreasonable to restrict freedom of expression only to generally accepted ideas.<sup>35</sup>

In September 1998, in the *Lehideux and Isorni* case, the Court held that a criminal conviction which included an order to pay token damages for publishing in a national newspaper an advertisement seeking the rehabilitation of Marshal Pétain constituted a violation of Article 10 of the Convention. In keeping with the case-law referred to on page 21, the Court confirmed that “the justification of a pro-Nazi policy could not be allowed to enjoy the protection afforded by Article 10”.<sup>36</sup> Here, however, the text of the advertisement distanced itself from any such justification by referring to “Nazi atrocities and persecutions” and “German omnipotence and barbarism”. While recognising that the advertisement made no mention of the fact that Marshal Pétain had “knowingly contributed to it, particularly through his responsibility for the persecution and deportation to the death camps of tens of thousands of Jews in France” (§54), the Court took a number of other circumstances into consideration. Firstly, the prosecuting authorities had considered proceedings against the applicants unnecessary. Secondly, the Court noted that forty years had passed since the events mentioned in the advertisement and referred to “the efforts that every country must make to debate its own history openly and dispassionately” (§55). The Court went on to note that the associations in which the applicants were active were legally constituted. Concluding that the sentence passed on the applicants was disproportionate, the Court stressed the “seriousness of a criminal conviction ... having regard to the existence of other means of intervention and rebuttal, particularly through civil remedies” (§57).

In its judgment in *Fressoz and Roire* (January 1999), the Court held that the criminal conviction for possessing photocopies of tax documents, fol-

35. *Hertel v. Switzerland*, judgment of 25 August 1998, Reports 1998-VI, §50.

36. *Lehideux and Isorni v. France*, judgment of 23 September 1998, Reports 1998-VII, §53.



lowing publication of an article giving details of the chairman of the Peugeot automobile company's pay increases in the satirical weekly *Le Canard enchaîné*, was a violation of Article 10.

The Court pointed out that the article complained of “contributed to a public debate on a matter of general interest”,<sup>37</sup> having been published during an industrial dispute at one of the main French car manufacturers. In the Court's opinion, the purpose of the article was not to infringe the rights – in this case, damage the reputation – of the company chairman, but to “contribute to the more general debate on a topic that interested the public”. In this case, “issues concerning employment and pay generally attract considerable attention ..., the interest in the public's being informed outweighed the duties and responsibilities the applicants had as a result of the suspect origin of the documents that were sent to them” (§§51, 52). The Court confirmed the principle that Article 10 “protects journalists' rights to divulge information of general interest provided 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” (§54).

In the case of *Bladet Tromsø and Stensaas*, the Court found that there had been a violation of Article 10. A newspaper and its editor had been ordered to pay damages for defamation after publication of statements made by a third party concerning alleged violations of seal hunting regulations. The Court said that it was the duty of the press to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. The newspaper had acted in good faith and it was reasonable of it to rely on an official report without having to carry out its own research into the accuracy of the facts reported. There was therefore no reasonable proportionality between the restrictions placed on the applicants' right to freedom of expression and the aim pursued, which was to protect the reputation of others.<sup>38</sup>

37. *Fressoz and Roire v. France* [GC], No. 29183/95, judgment of 21 January 1999, Reports 1999-I, §50.

38. *Bladet Tromsø and Stensaas v. Norway* [GC], No. 21980/93, judgment of 20 May 1999, Reports 1999-III.



The Court ruled on a number of cases in which the Turkish authorities had taken various measures (seizures and convictions) against the applicants (journalists, editors, publishers or owners of publications) under the criminal code or the Prevention of Terrorism Act following the publication of articles on state policies and actions and/or the problems in south-east Turkey.

It noted, in keeping with its previous case-law, that it was the duty of the press to impart information and ideas on political issues, even controversial ones, and that this went hand in hand with the public's right to be informed. It also stated, however, that in cases of incitement to violence and/or hatred, national authorities enjoyed a wider "margin of appreciation" in examining the need for interference.

In many of the cases, the Court did not think that the statements were incitements to violence and/or hatred. Consequently, the interference with freedom of expression was found to be disproportionate to the aim pursued and in violation of Article 10 of the Convention.<sup>39</sup> In others, however, the Court found no violation of Article 10 as the impugned publica-

39. In this connection, see the judgments *Erdoğan and Ince v. Turkey* [GC], Nos. 25067/94 and 25068/94, judgment of 8 July 1999, Reports 1999-IV; *Sürek and Özdemir v. Turkey* [GC], Nos. 23927/94 and 24277/94, judgment of 8 July 1999; *Sürek v. Turkey (No. 4)* [GC], No. 24762/94, judgment of 8 July 1999; *Ceylan v. Turkey* [GC], No. 23556/94, judgment of 8 July 1999, Reports 1999-IV; *Okçuoğlu v. Turkey* [GC], No. 24246/94, judgment of 8 July 1999; *Erdoğan v. Turkey*, No. 25723/94, judgment of 15 June 2000, Reports 2000-VI; *Sener v. Turkey*, No. 26680/95, judgment of 18 July 2000; *E.K. v. Turkey*, No. 28496/95, judgment of 7 February 2002; *Seher Karataş v. Turkey*, No. 33179/96, judgment of 9 July 2002; *Karakoç and others v. Turkey*, Nos. 27692/95, 28138/95 and 28498/95, judgment of 15 October 2002; *Ayşe Öztürk v. Turkey*, No. 24914/94, judgment of 15 October 2002; *Maraşlı v. Turkey*, No. 40077/98, judgment of 9 November 2004; *Dicle v. Turkey*, No. 34685/97, judgment of 10 November 2004; *Ayhan v. Turkey (No. 1)*, No. 45585/99, judgment of 10 November 2004; *Kalin v. Turkey*, No. 31236/96, judgment of 10 November 2004; *Halis v. Turkey*, No. 30007/96, judgment of 11 January 2005; *Gümüş and others v. Turkey*, No. 40303/98, judgment of 15 March 2005; *Ağın v. Turkey*, No. 46069/99, judgment of 29 March 2005; *Falakaoğlu v. Turkey*, No. 77365/01, judgment of 26 April 2005; *Teslim Töre v. Turkey*, No. 50744/99, judgment of 19 May 2005; *Pamak v. Turkey*, No. 39708/98, judgment of 7 June 2005; *Ergin v. Turkey (No. 1)*, No. 48944/99, judgment of 16 June 2005; *Ergin v. Turkey (No. 2)*, No. 49566/99, judgment of 16 June 2005; *Ergin v. Turkey (No. 3)*, No. 50691/99, judgment of 16 June 2005; *Ergin v. Turkey (No. 4)*, No. 63733/00, judgment of 16 June 2005; *Ergin v. Turkey (No. 5)*, No. 63925/00, judgment of 16 June 2005; *Ergin and Keskin v. Turkey (No. 1)*, No. 50273/99, judgment of 16 June 2005; *Ergin and Keskin v. Turkey (No. 2)*, No. 63926/00, judgment of 16 June 2005; *Aslı Güneş v. Turkey*, No. 53916/00, judgment of 27 September 2005; *Ceylan v. Turkey (No. 2)*, No. 46454/99, judgment of 11 October 2005; *Bakır v. Turkey*, No. 54916/00, judgment of 25 October 2005; *Ali Erol v. Turkey (No. 2)*, No. 47796/99, judgment of 27 October 2005; *Haydar Kaya v. Turkey*, No. 48387/99, judgment of 8 November 2005; *Korkmaz v. Turkey (No. 1)*, No. 40987/98, judgment of 20 December 2005; *Korkmaz v. Turkey (No. 2)*, No. 42589/98, judgment of 20 December 2005; *Korkmaz v. Turkey (No. 3)*, No. 42590/98, judgment of 20 December 2005; *Çetin v. Turkey*, No. 42779/98, judgment of 20 December 2005; *Çamlıbel v. Turkey*, No. 64609/01, judgment of 22 December 2005.



tions amounted to incitement to violence.<sup>40</sup> In this context, it was decided that the owner of a publication could not be absolved of liability: he was “vicariously subject to the duties ... which the review’s editorial and journalist staff undertake in the collection and dissemination of information to the public and which assume an even greater importance in situations of conflict and tension.”<sup>41</sup> Even if he did not personally endorse the opinions expressed in the articles, he provided the writers with an outlet for stirring up violence.

A number of cases were struck off the Court’s list following friendly settlements between the parties.<sup>42</sup>

In the *Sürek (No. 2)* judgment of 8 July 1999, the Court found that there had been a violation of Article 10 of the Convention. The applicant had been convicted of publishing the names of officials responsible for combating terrorism. In view of the seriousness of the officials’ offences, the Court decided that the public had a legitimate interest in being informed not only of their behaviour but also of their identity. In any case the information had already been published in other newspapers and so any interest in protecting the identity of the officers was “substantially diminished.”<sup>43</sup> A further point was that the conviction and sentence were capable of discouraging the contribution of the press to open discussion on matters of public concern. Accordingly, in the absence of a fair balance between protecting the freedom of the press and protecting the identity

40. In this connection, see the judgments *Sürek v. Turkey (No. 1)* [GC], No. 26682/95, judgment of 8 July 1999, Reports 1999-IV; *Sürek v. Turkey (No. 3)* [GC], No. 24735/94, 8 July 1999.

41. Judgment *Sürek v. Turkey (No. 1)* [GC], No. 26682/95, judgment of 8 July 1999, Reports 1999-IV, §63.

42. In particular, see the judgments *Kamil T. Sürek v. Turkey* (friendly settlement), No. 34686/97, judgment of 14 June 2001; *Altan v. Turkey* (friendly settlement), No. 32985/96, Reports 2002-III; *Ali Erol v. Turkey* (friendly settlement), No. 35076/97, judgment of 20 June 2002; *Sürek v. Turkey (No. 5)* (friendly settlement), Nos. 26976/95, 28305/95 and 28307/95, judgment of 16 July 2002; *Özcan Kiliç v. Turkey* (friendly settlement), Nos. 27209/95 and 27211/95, judgment of 26 November 2002; *Zarakolu v. Turkey* (friendly settlement), No. 32455/96, judgment of 27 May 2003; *Caralan v. Turkey* (friendly settlement), No. 27529/95, judgment of 25 September 2003; *Zarakolu v. Turkey (No. 1)* (friendly settlement), No. 37059/97, judgment of 2 October 2003; *Zarakolu v. Turkey (No. 2)* (friendly settlement), No. 37061/97, judgment of 2 October 2003; *Zarakolu v. Turkey (No. 3)* (friendly settlement), No. 37062/97, judgment of 2 October 2003; *Zana and others v. Turkey* (friendly settlement), Nos. 51002/99 and 51489/99, judgment of 11 January 2005; *Taniyan v. Turkey* (friendly settlement), No. 29910/96, judgment of 17 March 2005; *Ahmet Turan v. Turkey* (friendly settlement), No. 72071/01, judgment of 22 December 2005.

43. *Sürek v. Turkey (No. 2)* [GC], No. 24122/94, §40, judgment of 8 July 1999.



of the officials, the Court declared the interference disproportionate to the legitimate aims pursued.

The Court found that there had been a violation of Article 10 of the Convention in the *Öztürk* case of 28 September 1999. The applicant had been convicted of inciting hatred by publishing the second edition of a book recounting the life of one of the founders of the Turkish Communist Party. The author, charged with the same offence as the applicant, had been acquitted. The Court took the view that the impugned book, whose content did not differ in any way from that of the other editions, could not be regarded as an incitement to violence and, without any evidence of concrete action to the contrary, had no aims other than those proclaimed by the author. It therefore held that it had not been established that, at the time of the edition's publication, there had been any pressing social need.<sup>44</sup>

In the *Dalban* case, the Court ruled that a journalist's criminal conviction of defamation following the publication of several articles accusing prominent public figures of involvement in fraud constituted a violation of Article 10 of the Convention. It was the duty of the press, while respecting the reputation of others, to impart information and ideas on all matters of public interest, and it was unacceptable that "a journalist should be debarred from expressing critical value judgments unless he or she [could] prove their truth".<sup>45</sup> The impugned articles had to do not with the private lives of the prominent figures but with their behaviour and attitudes in discharging their duties. There was no proof that the description of events given in the articles was totally untrue or calculated to fuel a defamation campaign. In relation to the legitimate aim pursued, therefore, convicting the applicant of a criminal offence amounted to disproportionate interference with exercise of the journalist's freedom of expression.

The *News Verlags GmbH and CoKG* case concerned an order prohibiting a magazine from publishing photographs of a suspect in connection with

44. *Öztürk v. Turkey* [GC], No. 22479/93, judgment of 28 September 1999, Reports 1999-VI.

45. *Dalban v. Romania* [GC], No. 28114/95, judgment of 28 September 1999, Reports 1999-VI, §49.



articles about criminal proceedings against him. The pictures were accompanied by comments directly or indirectly designating the applicant as the culprit. The Court took all the circumstances into account. In particular, the fact that the photographs were published following a series of letter-bomb attacks proved that the issue was one of public interest. The suspect, a known right-wing extremist, was also suspected of attempts to undermine democratic society. Finally, the photographs revealed nothing of the suspect's personal life and in no way invaded his privacy.

The Court noted that the pictures had been prohibited even though they were a threat to the suspect's legitimate interests only because of the accompanying comments. In addition, the order restricted the applicant company's freedom to present its articles as it pleased while other media had been allowed to publish the photographs throughout the judicial proceedings. The Court accordingly found the impugned measure disproportionate to the legitimate aims pursued and therefore at variance with Article 10.<sup>46</sup>

In March 2000 the Court delivered judgment in the *Özgür Gündem* case, which was about various occurrences (attacks, a police search of premises, arrests and convictions) concerning a newspaper and its staff.

On the alleged acts of violence, the Court held that in view of the crucial importance of freedom of expression as one of the preconditions for a functioning democracy, "exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals. In determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual".<sup>47</sup>

The argument that the newspaper and its staff supported the PKK did not "provide a justification for failing to take steps effectively to investigate and, where necessary, provide protection against unlawful acts involving violence" (§45). The Court concluded that the Government had

46. *News Verlags GmbH & Co. KG v. Austria*, No. 31457/96, judgment of 11 January 2000, Reports 2000-I.

47. *Özgür Gündem v. Turkey*, No. 23144/93, judgment of 16 March 2000, Reports 2000-III, §43.



failed to comply with its positive obligation to protect the newspaper in the exercise of its freedom of expression.

The Court went on to consider the various measures imposed on the applicants by the authorities. The search and arrest operation was found to be disproportionate to the legitimate aim pursued – protection of law and order – as it had seriously disrupted production of the newspaper despite there being no real evidence of the need for such a measure.

Concerning the various penalties imposed for publishing articles, it was decided that in most cases they had been unnecessary in a democratic society. The Court pointed out:

the dominant position enjoyed by the State authorities makes it necessary for them to display restraint in resorting to criminal proceedings. The authorities of a democratic State must tolerate criticism, even if it may be regarded as provocative or insulting (S60).

In the Court's opinion, the articles were not an incitement to violence in their content, tone or context. Nor could interviews with a member of a proscribed organisation, virulent criticism of government policy or use of the name *Kurdistan* in a context implying that it was separate from Turkish territory in themselves justify interfering with the newspaper's freedom of expression. Only three articles were found to advocate the use of violence and the relevant measures taken by the authorities were found to be in keeping with Article 10.

In May 2000 the Court gave judgment in *Bergens Tidende and others*, a case in which a newspaper, its former editor and a journalist had been ordered to pay damages to a plastic surgeon for a series of articles reporting the experiences of dissatisfied patients. The Court observed at the outset that the articles "concerned an important aspect of human health and as such raised serious issues affecting the public interest".<sup>48</sup> The events related by the patients were true in essence and faithfully reported by the newspaper. The fact that the newspaper did not make it explicitly

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48. *Bergens Tidende and others v. Norway*, No. 26132/95, judgment of 2 May 2000, Reports 2000-IV, §51.



clear that the accounts were not to be taken as suggesting a lack of surgical skills did not show a lack of balance on its part. The Court held:

news reporting based on interviews constitutes one of the most important means whereby the press is able to play its vital role of “public watchdog” (§57).

While accepting that publication of the articles had adversely affected the doctor’s professional practice, the Court said that:

given the justified criticisms relating to his post-surgical care and follow-up treatment, it was inevitable that substantial damage would in any event be done to his professional reputation (§59).

The doctor’s interest in protecting his reputation was therefore not sufficient to outweigh the public interest in protecting the freedom of the press to impart information on matters of legitimate public concern, and the Court concluded that there had been a violation of Article 10.

In the *Lopes Gomes Da Silva* case, a newspaper director had been found guilty of using defamatory language in an editorial about a journalist who was a candidate in municipal elections. The opinions expressed by the applicant had clearly been part of a political debate on matters of general interest. In the Court’s view the editorial could be considered polemical but did not constitute a gratuitous personal attack, as the author gave an objective explanation. The Court added that political invective often spilled over into the personal sphere, and that that was one of the hazards of politics and the free debate of ideas that were the guarantees of a democratic society<sup>49</sup>. The applicant’s reaction seemed to be influenced by the caustic, provocative tone of his adversary. But above all, in reproducing alongside the impugned editorial excerpts from the other party’s article, the newspaper director had been acting in accordance with the rules of journalism, and had thereby enabled readers “to form their own opinion by comparing the editorial concerned with the statements made by the person referred to in it” (§35). The Court found

49. *Lopes Gomes da Silva v. Portugal*, No. 37698/97, judgment of 28 September 2000, Reports 2000-X, §34.



that the journalist's sentence had not been proportionate to the legitimate aim pursued and was therefore contrary to Article 10.

In October 2000, the Court delivered judgment in the case of *Roy and Malaurie*. A newspaper director and a journalist had been convicted of publishing an article about a criminal complaint and associated application to join the proceedings as a civil party. The Court confirmed the principle that journalists must not overstep the limits required by proper administration of justice, such as the right of the defendant to be presumed innocent. In this case, however, the impugned interference consisted in a blanket ban on publishing of any type of information whatsoever. Further, the ban, the ground for which was the need to protect the reputation of others and the authority of the judiciary, applied only to criminal complaints associated with civil-party applications, and not to proceedings instituted by the prosecuting authorities or following an ordinary complaint. In the opinion of the Court:

such a difference of treatment of the right to information seems to be based on no objective grounds, although it fully hindered the right of the press to inform the public about subjects which, although related to a criminal complaint together with an application to join the proceedings as a civil party, [might be] of public interest.<sup>50</sup>

That was the case here as the article had targeted French political figures and their behaviour. The Court pointed out that there were ways of protecting the rights of the accused which did not necessitate an outright ban on publication. The sentence was thus disproportionate to the aims pursued and contravened Article 10.

In the *Tammer* case in February 2001, the Court found that a journalist's conviction of insulting a politician's assistant in comments he had made about her private life was in accordance with Article 10 of the Convention. It had not been established that the impugned statement served any public interest or related to a matter of general concern. The applicant could also have expressed his negative opinion without using offensive

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50. *Du Roy and Malaurie v. France*, No. 34000/96, judgment of 3 October 2000, Reports 2000-X, §35.



language. In view of the small fine imposed, the Court concluded that the national courts had appropriately balanced the interests at stake, namely the protection of the reputation of others and a journalist's right to impart information on problems of public interest.<sup>51</sup>

In March 2001 the Court delivered judgment in the *Thoma* case, in which a journalist had been convicted of failing to impart fair information by quoting excerpts from an article that questioned the honesty of a body of civil servants without distancing himself from the comments. The applicant's programme had had to do with a matter of general interest. In its judgment the Court held:

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.<sup>52</sup>

The journalist had in fact taken the precaution of saying that he was beginning a quotation and citing the author. He had described the article by his fellow journalist as "strongly worded". He had also asked a third party what he thought of the article quoted from. The Court found that the grounds given for the applicant's conviction were not sufficient to justify the interference and that there had been a violation of Article 10.

In February 2002, the Court ruled on the *Dichand and others* case, concerning an injunction prohibiting the editor and the owner of a newspaper from repeating certain statements criticising the Chair of a parliamentary legislative committee who had continued practising as a lawyer despite his political duties. The first statement reproached the politician for failing to comply with moral concepts existing in democracies all over the world, citing the example of a French minister who had stopped practising as a lawyer after becoming a member of the government. In the Court's view, and bearing in mind the context in which they had been made, the comments did not explicitly state that the man was a member of the government. Consequently, they did not contain any incorrect

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51. *Tammer v. Estonia*, No. 41205/98, judgment of 6 February 2001, Reports 2001-I.

52. *Thoma v. Luxembourg*, No. 38432/97, judgment of 29 March 2001, Reports 2001-III, §64.



statements of fact. The second statement asserted that the politician had been involved in legislation that had been to the advantage of his clients. The Court found that there was sufficient factual basis for this value judgment and that it represented fair comment on an issue of general public interest. Whilst acknowledging the strong, polemical language used, it pointed out that the Convention also protected information or ideas that offended, shocked or disturbed. The restriction imposed on the applicants was accordingly found to be disproportionate to the aim pursued. The Court concluded that there had been a violation of Article 10.<sup>53</sup>

The *Unabhängige Initiative Informationsvielfalt* judgment, delivered in February 2002, concerned an injunction prohibiting an association which was the publisher of a periodical from repeating the expression “racist agitation” in relation to an Austrian political party. The impugned statement had been made in reaction to an opinion poll on immigration. It did not contain any gratuitous personal attacks, being a contribution to debate on a matter of general interest. In the Court’s view, the impugned statements were in the nature of a value judgment which, in the circumstances of the case, could not be regarded as excessive. The Court concluded that the prohibition imposed on the applicant had been disproportionate to the aim pursued and in breach of Article 10.<sup>54</sup>

In February 2002, the Court found a violation of Article 10 in the *Krone Verlag GmbH and CoKG* case, which had to do with an injunction prohibiting a newspaper publishing company from publishing photographs of a politician in articles criticising him for receiving unlawful salaries. The Court found that the Austrian courts had failed to take into account the essential function which the press fulfils in a democratic society and its duty to impart information on all matters of public interest. The articles undoubtedly dealt with a matter of public concern which did not fall wholly within the private sphere. Furthermore, they were about a politician, whose functions meant that he had become a public figure; it was of

53. *Dichand and others v. Austria*, No. 29271/95, judgment of 26 February 2002.

54. *Unabhängige Initiative Informationsvielfalt v. Austria*, No. 28525/95, judgment of 26 February 2002, Reports 2002-I.



little importance in this respect whether a person (or his or her picture) was actually known to the public. Consequently, as the photographs did not disclose any details of the man's private life, there was no valid reason to prohibit the applicant company from publishing them.<sup>55</sup>

A judgment that Article 10 had not been violated was delivered in the *McVicar* case, concerning the burden of proof placed on a journalist and his conviction of defaming a sportsman by accusing him of using illegal performance-enhancing drugs. The Court found that the order that the applicant pay court costs and the prohibition on repeating the impugned statements were not disproportionate since the journalist had failed to prove the truth of his allegations.

Regarding the burden of proof, the Court said that special grounds were required before a newspaper could be absolved of its obligation to verify factual statements that were defamatory of private individuals (see the *Bladet Tromsø and Stensaas* judgment on page 20). The allegations in the case had not come from clearly identified sources and were potentially very damaging to the sportsman's future. Further, the journalist had set about thoroughly verifying their truth or reliability only once the defamation proceedings had been commenced. In the circumstances, the Court held that placing the burden of proof on the applicant was a justified restriction on his freedom of expression.<sup>56</sup>

In the *Colombani and others* case, the applicants, a newspaper director and a journalist, had been convicted of insulting a foreign head of state in an article, based on an official report, which had questioned the determination of the Moroccan authorities, and in particular the King, to combat drug trafficking in their country. The Court said that the duties and responsibilities of journalists required them to act in good faith "in order to provide accurate and reliable information in accordance with the ethics of journalism". Clearly, when contributing to public debate on matters of legitimate concern, "the press should normally be entitled ... to rely on the content of official reports without having to undertake independent

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55. *Krone Verlag GmbH und Co. KG v. Austria*, No. 34315/96, judgment of 26 February 2002.

56. *McVicar v. the United Kingdom*, No. 46311/99, judgment of 5 May 2002, Reports 2002-III.



research”.<sup>57</sup> In this case, the Court decided that the applicants had acted in good faith by relying on a report that was uncontested and credible.

Making the offence a criminal one deprived the journalists of the opportunity to prove the truth of their allegations, an opportunity they would have had under the ordinary law of defamation. In the Court’s opinion, the restriction was excessive in terms of protecting a person’s reputation and rights, even when that person was a head of state. In addition, the offence breached Article 10 by conferring special legal status on heads of state and shielding them from criticism solely on account of their function. That privilege could not be reconciled with modern practice and political conceptions. The Court concluded that there had been a violation of Article 10 since, in its view, there was no reasonable relationship of proportionality between the applicants’ conviction and the aim pursued.

Following a friendly settlement, the Court decided to strike off the list the *Freiheitliche Landesgruppe Burgenland* case, in which a regional branch of a political party had been ordered to pay damages for publishing in its magazine a caricature, with caption, of the head of a regional branch of an opposing political party.<sup>58</sup>

In a February 2003 judgment the Court ruled that the ban on distributing a newspaper in a region subject to a state of emergency was a violation of Article 10. The inherent difficulties of combating terrorism had to be taken into account, along with the political tension caused by terrorist acts in the region at the time and the potential impact of articles in a sensitive climate. However, the impact of the press was often less immediate and powerful than that of the broadcast media. Moreover, no reasons had been given for the ban, and nor was it subject to any kind of judicial review, with the result that the applicants were deprived of sufficient safeguards against possible abuse.<sup>59</sup>

In February 2003 the Court found another violation of Article 10, in a case in which, further to an article accusing a minister of VAT fraud, a jour-

57. *Colombani and others v. France*, No. 51279/99, judgment of 25 June 2002, Reports 2002-V, §65.

58. *Freiheitliche Landesgruppe Burgenland v. Austria* (friendly settlement), No. 34320/96, 18 July 2002.

59. *Çetin and others v. Turkey*, Nos. 40153/98 and 40160/98, judgment of 13 February 2002, Reports 2003-III.



nalist who was being prosecuted for handling information disclosed in breach of professional confidence had had his home and workplace searched. The searches, to identify the person responsible for breaching professional confidence and thus the journalist's source, were deemed to constitute an interference with his rights under Article 10. Searches conducted to uncover a journalist's source – even if unproductive – were a more drastic measure than an order to divulge the source's identity (see p. 17, *Goodwin* judgment of 27 March 1996) because investigators who surprised a journalist at his or her workplace armed with search warrants had very wide investigative powers which, by definition, gave them to all documents held by the journalist. Limitations on the confidentiality of journalists' sources needed extremely careful scrutiny by the Court. While the reasons relied on by the domestic authorities might be regarded as "relevant", they were not "sufficient" to justify the searches of the applicant's home and workplace. The searches were therefore disproportionate to the aims pursued.<sup>60</sup>

The *Perna* case, on which the Grand Chamber delivered judgment in May 2003, concerned a journalist's conviction for defamation following a statement criticising a senior judge. In an article the applicant had questioned the judge's political militancy, which he had likened to an "oath of obedience". He had also accused the judge of instituting proceedings against a statesman for "belonging to the Mafia" without any proof.

In the Court's view, it was apparent from the whole article that the author was putting across a clear and unambiguous message that the judge under attack had knowingly committed an abuse of authority by participating in an Italian Communist Party strategy to gain control of public prosecutors' offices in Italy. At no point had the applicant tried to prove the truth of his allegations; on the contrary, he argued that he had expressed critical judgments which there was no need to prove. The Court accordingly held that the applicant's conviction and sentence were not disproportionate to the legitimate aim pursued, and that the reasons

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60. *Roemen and Schmit v. Luxembourg*, No. 51772/99, judgment of 25 February 2003, Reports 2003-IV.



given by the national courts in justification of those measures were sufficient and relevant. Consequently, the interference with the right to freedom of expression did not contravene Article 10.<sup>61</sup>

In a case in which judgment was given in July 2003, four journalists complained about searches and seizures conducted at their homes and offices during investigation of breaches of confidence by members of the state legal service<sup>62</sup>. Firstly, the Court noted that it had at no stage been alleged that the applicants had written articles containing secret information about the cases that had led to the searches. Secondly, the Court pointed to the sweeping nature of the searches, which could have been replaced by other methods more in keeping with the applicants' rights. The Court concluded that the means employed were not proportionate to the legitimate aims pursued and breached Article 10 of the Convention.

In November 2003 the Court found a violation of Article 10 in a case in which a newspaper publishing company had been ordered to pay damages for failing to execute in the prescribed form an appeal court order to publish a notice to the effect that proceedings had been brought against it following a defamatory article.<sup>63</sup> In the Court's opinion, the applicant company could not be expected to publish another notice – a court decision having been given in its favour – merely in case the decision was quashed by a higher court or for fear of the plaintiff's making an enforcement request imposing further financial penalties. The Court held that the financial penalties imposed on the applicant for the period of the appeal proceedings were disproportionate and unnecessary in a democratic society.

In the *Scharsach and News Verlagsgesellschaft* case the applicants, a journalist and a company that was the owner and publisher of a weekly magazine, disputed their defamation conviction for publishing an article accusing a politician of supporting neo-Nazi ideas.<sup>64</sup> Taking into account

61. *Perna v. Italy* [GC], No. 48898/99, judgment of 6 May 2003, Reports 2003-V.

62. *Ernst and others v. Belgium*, No. 33400/96, judgment of 15 July 2003.

63. *Krone Verlag GmbH und Co. KG v. Austria (No. 2)*, No. 40284/98, judgment of 6 November 2003.



that the criticism was aimed at a politician, and given the role of journalists and the press in imparting information and ideas on matters of public interest, even those that may offend, shock or disturb, the Court found that the use of the term “closet Nazi” did not exceed what might be considered fair comment. The Court consequently held that there had been a violation of Article 10.

In March 2004,<sup>65</sup> the Court delivered judgment in a case in which Radio France journalists had been convicted of defamation for repeating in several news bulletins information that had appeared in a weekly magazine to the effect that a former deputy prefect had supervised deportation of Jews during the second world war. As the case involved a restriction of freedom of expression in a matter of public interest, the Court carefully considered the proportionality of the measures imposed. It found that the journalists had acted in accordance with journalism ethics in repeating information published in a weekly magazine. By stating that the deputy prefect had admitted guilt, however, they had put out incorrect information not published elsewhere. Subsequent bulletins had rectified the statement, emphasising that the deputy prefect denied the accusations, but that was not sufficient given the seriousness of the allegations. In view of the margin of appreciation which states enjoyed, “a criminal measure as a response to defamation cannot, as such, be considered disproportionate to the aim pursued” (§40). Similarly, the requirement that Radio France broadcast an announcement about the conviction amounted to only “a moderate restriction on ... editorial freedom” (§40). The Court concluded that there had been no violation of Article 10.

In *Rizos and Daskas* the Court dealt with a defamation case in which the applicants had been ordered to pay damages to a prosecutor for publishing an article that criticised his unlawful conduct and referred to a judicial investigation of it.<sup>66</sup> In the Court’s view, the sentences for which the applicants had been convicted did not go beyond the limits of permissible

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64. *Scharsach and News Verlagsgesellschaft v. Austria*, No. 39394/98, judgment of 13 November 2003, Reports 2003-XI.

65. *Radio France and Others v. France*, No. 53984/00, judgment of 30 March 2004, Reports 2004-II.

66. *Rizos and Daskas v. Greece*, No. 65545/01, judgment of 27 May 2004.



comment on a topical issue. Consequently, the Court concluded that there had been a violation of Article 10, given that a prosecutor's interest in protecting his or her reputation did not outweigh the vital general interest in informing the public about a matter relating to the functioning of the judicial system.

In a defamation case following the publication of articles criticising a Supreme Court judge, the Court found that the penalty imposed on the applicant was in breach of Article 10.<sup>67</sup> The impugned articles contained value judgements which, although very critical, had an acknowledged basis in fact. Furthermore, the limits of acceptable criticism were wider in respect of a judge who entered political life, especially as the articles concerned a matter of public interest.

The Court held that two journalists' defamation conviction for articles directly challenging a judge constituted a violation of Article 10.<sup>68</sup> The allegations were admittedly serious but they had a basis in fact and concerned the judge's professional behaviour and attitudes, not aspects of her private life. Further, the impugned articles were about topics of general interest, the process of land restitution and alleged corruption among senior officials.

In a November 2004 judgment, the Court found that the applicants' conviction for interfering with the private life of a member of parliament infringed Article 10.<sup>69</sup> The impugned article mentioned the member of parliament only indirectly, stating that she was the wife of the person who was the subject of the court proceedings related in the article. Politicians must accept interference with some aspects of their private lives since their behaviour might influence voters. Here, the member of parliament had used her status and immunity to have an even more severe penalty imposed on the applicants. Yet the offences were unconnected with the reasons for which members of parliament enjoyed immunity. The domestic rule in question was thus incompatible with the principles

67. *Hrico v. Slovakia*, No. 49418/99, judgment of 20 July 2004.

68. *Sabou and Pircalab v. Romania*, No. 46572/99, judgment of 28 September 2004.

69. *Karhuvaara and Iltalehti v. Finland*, No. 53678/00, judgment of 16 November 2004, Reports 2004-X.



developed by the Court in relation to freedom of expression. In addition, the penalty was disproportionate to the legitimate aim pursued.

In the *Selistö* case, in which a journalist had been convicted of defaming a surgeon in two articles, the Court concluded that there had been a violation of Article 10.<sup>70</sup> The articles dealt with a matter of public interest, patient safety, which was an important aspect of health care issues. Furthermore, the interview illustrating the subject of the article did not contain any erroneous statements of fact and, although selective, the information given did not identify the surgeon in question. The applicant had not acted in bad faith in publishing the articles, therefore, and the surgeon's interest in protecting his reputation did not outweigh the important issues dealt with in them.

In the *Pedersen and Baadsgaard* case (judgment December 2004), two journalists had been convicted of defamation after suggesting in a television programme that a chief superintendent might have been responsible for suppressing important evidence during a criminal investigation. A Grand Chamber of the Court found that Article 10 had not been violated<sup>71</sup>. It noted that the conviction had followed serious accusations against a named civil servant which would have resulted in his criminal prosecution had they been true. The applicants' programme had damaged public confidence in that person and disregarded presumption of innocence. It had contained factual statements which the journalists had had an obligation to verify. These turned out to be partly incorrect. The Court held that the domestic courts had appropriately balanced the relevant considerations before convicting the applicants and imposing a sentence which the Court found to be proportionate to the legitimate aim pursued.

In a December 2004 judgment, the Court ruled that a conviction for insult and defamation following the publication of an article, with a cartoon, accusing a judge of fraud was in breach of Article 10.<sup>72</sup> The article

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70. *Selistö v. Finland*, No. 56767/00, judgment of 16 November 2004.

71. *Pedersen and Baadsgaard v. Denmark* [GC], No. 49017/99, judgment of 17 December 2004, Reports 2004-XI.

72. *Cumpănă and Mazăre v. Romania* [GC], No. 33348/96, judgment of 17 December 2004, Reports 2004-XI.



contained information about management of public funds by elected representatives and public officials, which was a matter of general interest. While the information published undoubtedly came from an Audit Court report that had not yet been published, the Court did not consider it appropriate to examine how it had come into the applicants' possession: "... the means used by the applicants to obtain a copy of the document in question fall within the scope of the freedom of investigation inherent in the practice of their profession" (§96). The Court did note that the criticisms contained in the article presented a distorted view of reality and were not based on actual fact. Thus the national courts had properly balanced the relevant interests in convicting the applicants. However, the penalty imposed (a prison sentence and a prohibition on exercising certain civil rights or working as a journalist for a period of one year) was disproportionate to the aim pursued. Indeed, "... the Court considers 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 ..." (§115). In this connection, the Court noted legislative developments in Romania leading to the de-criminalisation of the offence of insult and the abolition of prison sentences for defamation. The circumstances of the case were not exceptional and did not justify a prison sentence. As for the secondary penalties imposed, a prohibition on working as a journalist amounted to a prior restraint which was not justified by the circumstances either.

In a case concerning a defamation conviction resulting from an article about the management of an airport, the Court carefully scrutinised the applicant's various published statements<sup>73</sup> to ascertain whether the applicant – a journalist – had published factual statements the truth of which could be demonstrated, unlike that of value judgments. On the basis of this distinction, the Court concluded that Article 10 had been infringed in some respects but not in others. It declined to apply its case-law concerning the protection from criticism that some public servants

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73. *Busuioc v. Moldova*, No. 61513/00, judgment of 21 December 2004.



may enjoy. It ruled that it would be going too far to extend that case-law to all persons employed by the state or by state-owned companies (§64).

In the *Ukrainian Media Group* case, in which the applicant, a company owning a daily newspaper, had been convicted of defaming presidential election candidates in two published articles about them, the Court concluded that freedom of expression had been infringed.

Having found that the applicant's conviction constituted an interference that was prescribed by law and legitimate with a view to protecting the reputation and rights of others, it reviewed the need for such an interference in a democratic society. In this connection, it decided that it had a duty to assess, firstly, whether domestic law and practice were compatible with the Convention. It found that, since Ukrainian law did not make any distinction between value judgments, fair comment and statements susceptible of proof, "the domestic law and practice contained inflexible elements which in their application could engender decisions incompatible with Article 10 of the Convention" (§62).

It then turned its attention to the consequences of applying the legislation to this case, and held that the articles amounted to value judgments not susceptible of proof and that they were clearly concerned with the candidates' professional activities. They were admittedly virulent in tone and might have offended the persons concerned. As politicians, however, those persons accepted that they laid themselves open to such criticism. In the Court's opinion, the applicant's conviction was disproportionate to the legitimate aim pursued.<sup>74</sup>

In June 2005, the Court ruled that there had not been any violation in the *Independent News and Media and Independent Newspapers Ireland Limited* case. The publishers of a newspaper had been convicted of libel by a jury, which had awarded exceptionally high damages. The issue before the Court was whether the damages were proportionate to the injury to reputation. The applicants relied on the *Tolstoy Miloslavsky* judgment (see p. 16), arguing that national law did not contain adequate or effective

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74. *Ukrainian Media Group v. Ukraine*, No. 72713/01, judgment of 29 March 2005.



safeguards against excessive awards of damages and that the domestic courts had therefore contravened Article 10.

Firstly, the Court acknowledged that the award was three times higher than the highest libel award ever previously approved by the Irish Supreme Court and that no comparable award had been made since then. It held that the *Tolstoy Miloslavsky* case-law was applicable to the case. It then had to examine the safeguards against excessive damages within the Irish legal system. It found that the case was distinguishable from *Tolstoy Miloslavsky* in that the judge in the case had given the jury concrete indications as to the level of damages to be awarded. Having established this, the Court went on to consider whether the degree of appellate review of jury awards of damages was adequate. Once again, the Court pointed out a major difference between the *Tolstoy Miloslavsky* case and the present case: the nature of appellate review under Irish law was more “robust” in that it examined whether the damages were proportionate to the injury to reputation. The Irish Supreme Court had thus taken into account a number of relevant factors before concluding that the amount awarded was proportionate: the gravity of the libel, the effect on the victim and on his negotiations with a view to forming a government, the extent of the publication, the conduct of the applicants and the impact on the victim of three long and difficult trials. The Court consequently found that the review of proportionality carried out by the appellate courts was sufficiently effective and adequate that it did not violate Article 10.<sup>75</sup>

In July 2005 the Court found that there had been a violation of Article 10 in the *Grinberg* case. This concerned a journalist who had been convicted of defamation and ordered to pay damages following the publication of an article criticising a regional governor. Having found that the applicant’s conviction constituted an interference that was prescribed by law and legitimate for protecting the reputation and rights of others, the Court went on to review the need for such an interference in a democratic society. Firstly, it noted that Russian law did not make any distinction

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75. *Independent News and Media and Independent Newspapers Ireland Limited v. Ireland*, No. 55120/00, judgment of 16 June 2005, Reports 2005-V.



between value judgements and statements of fact: it referred uniformly to “statements” and proceeded from the assumption that any such statement could be required to be proven in civil proceedings. The Court took the view that the contested comment – that the governor had “no shame and no scruples” – was akin to a value judgment; by its very nature, it did not require proof. In addition, the contested statement had been made in the context of an article dealing with an issue of public interest and it concerned a politician, in respect of whom the limits of acceptable criticism were wider than in respect of a private individual.<sup>76</sup>

In the *Savitchi* case<sup>77</sup> the Court concluded that there had been a violation of Article 10. The applicant, a journalist, had been convicted of defaming a police officer in the press. Firstly, the Court found that the case was distinguishable from *Janowski* (see below, p. 106). The applicant’s statements formed part of a discussion of matters of public concern, and the language used was moderate. Finally, it did not appear that the applicant had acted in bad faith with the purpose of defaming the police officer in question. In its analysis of the contested passages in the applicant’s articles, the Court found both value judgements and statements of fact. However, requiring the applicant to prove the truth of certain statements while at the same time depriving her of the opportunity to produce such evidence interfered with her right to freedom of expression in a manner which was not necessary in a democratic society.

In a case concerning the publishing house that owned the magazine *Profil*,<sup>78</sup> the Court found that there had been a violation of Article 10. The applicant company had been ordered to pay compensation to Jörg Haider, who had considered himself defamed by a published article on a book about him. The article reproached the book’s author with failing to criticise Haider’s belittlement of the concentration camps as “punishment camps”. In addition, the domestic courts had ordered that the publishing house publish the judgment and that the offending issue of *Profil* be for-

76. *Grinberg v. Russia*, No. 23472/03, judgment of 21 July 2005.

77. *Savitchi v. Moldova*, No. 11039/02, judgment of 11 October 2005.

78. *Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria*, No. 58547/00, judgment of 27 October 2005.



feited. The Court viewed the central issue as the distinction between statements of fact and value judgments. Unlike the national courts, it regarded the statements made in the article as value judgments with a factual basis in Mr Haider's having always made ambivalent comments about the National Socialist regime. In the Court's opinion, therefore, it was not excessive for the author of the article to talk about belittlement when referring to use of the term "punishment camps" rather than "concentration camps".

In the *Tourancheau and July* case<sup>79</sup> the Court considered an application from a newspaper editor and a journalist who had both been given suspended fines for publishing documents from a criminal case file before they had been read out in open court. The daily newspaper *Libération* had published an article by the first applicant about a murder. The criminal investigation had still been in progress and the two suspects under investigation. Each accused the other of the crime, but one had been released while the other was in pre-trial detention. The article described the circumstances of the murder and the relationship between the two suspects before the murder. In particular, it reproduced extracts from statements made to the police and the investigating judge and comments contained in the case file or noted down during an interview given to the first applicant. The applicants did not dispute that, with a few exceptions, all the quotations and transcripts were absolutely identical to those in the case file. However, the first applicant maintained that she had never seen the case file and had simply copied the extracts of the hearings and court papers from notes made by one of the suspects. The Court noted that the applicants' conviction amounted to an interference with their freedom of expression which could be regarded as being "prescribed by law" even though the bringing of proceedings was left to the discretion of the public prosecutor's office. In the Court's view, the aims of the interference had been to protect "the reputation and rights of others" and to maintain "the authority and impartiality of the judiciary". The Court went on to consider

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79. *Tourancheau and July v. France*, No. 53886/00, judgment of 24 November 2005.



the need for the interference in a democratic society, noting that the article had backed one suspect's version of events to the detriment of the other suspect. Before going on to apply the domestic law the courts had therefore rightly stressed the applicants' infringement of the right to be presumed innocent. Also, French law prohibited only the literal reproduction of documents from the case file,<sup>80</sup> not analysis or comment, a rule that did not totally deny the press the right to inform the public. The Court took the view that the applicants' interest in imparting information about the progress of criminal proceedings and the suspects' guilt – and the interest of the public in receiving such information – while the judicial investigation was still in progress were not sufficient to prevail over the considerations referred to by the national courts. Lastly, the Court held that the penalties imposed on the applicants had not been disproportionate to the legitimate aims pursued by the authorities. It therefore concluded that there had been no violation of Article 10.

In the *Urbino Rodrigues* case<sup>81</sup> the Court considered an application from a newspaper editor who had been fined for libelling another journalist by publishing an article describing him as using “mafia-style” methods and accusing him of deliberately omitting certain facts. The Court made the point that the two journalists had a public role and that the limits of acceptable criticism were therefore wider in their case than in respect of a private individual. Further, the two phrases used by the applicant could not be described as libellous. The first was a value judgment and must be taken in the context of reciprocal attacks by two journalists. Although the second accusation was a professional insult to the journalist concerned, it simply responded to his own accusations. The Court concluded that, whilst the grounds given to justify the applicant's conviction could be regarded as pertinent, they did not correspond to any pressing social need. The applicant's conviction, irrespective of the light sentence imposed, therefore constituted a violation of Article 10.

80. *Ibid.*, §73.

81. *Urbino Rodrigues v. Portugal*, No. 75088/01, judgment of 29 November 2005.



In the *Wirtschafts-Trend Zeitschriften-Verlags GmbH* case<sup>82</sup> the Court considered two applications arising from an article in the weekly magazine *Profil*. The article, illustrated with photographs, was about the flight from Austria and subsequent arrest of a politician and his female partner, and compared them to “Bonnie and Clyde”. The magazine was convicted under the Criminal Code of defaming the politician’s partner by comparing her to “Bonnie”. Under copyright law, *Profil* was prohibited from publishing her photograph without her consent. With regard to the criminal conviction, the Court held that the applicant company had not overstepped the bounds of acceptable criticism by the press, which must be allowed to use exaggeration and even provocation. Concerning the injunction, the Court observed that the photograph did not disclose any details of the politician’s partner’s private life of the politician’s cohabitee and that she had not objected to having it taken. It concluded that there had been a violation of Article 10.

## 2. Decisions and reports of the Commission and the Court

In March 1991 the Commission declared inadmissible an application concerning publication in the press of an investigating judge’s memorandum reporting the applicants’ involvement in certain offences.<sup>83</sup>

In its *Purcell* decision the Commission ruled that an application concerning a prohibition on broadcasting interviews with certain organisations, in particular a recognised political party, was inadmissible.<sup>84</sup> It noted that the ban did not prohibit reports on those organisations in question but applied solely to interviews. The ban was intended to prevent the broadcast media’s being used to advocate support for organisations that incited violence and sought to undermine the constitutional order. The Commission made the point that radio and television “are media of considerable power and influence. Their impact is more immediate than that of the print media, and the possibilities for the broadcaster to correct,

82. *Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria* (No. 3), Nos. 66298/01 and 15653/02, judgment of 13 December 2005.

83. Application No. 13251/87, *Berns and Ewert v. Luxembourg*, decision of 6 March 1991, DR68, p. 137.

84. Application No. 15404/89, *Purcell and others v. Ireland*, decision of 16 April 1991, DR70, p. 262.



qualify, interpret or comment on any statement made on radio or television are limited in comparison with those available to journalists in the press.<sup>85</sup> Given the limited scope of the restrictions, the Commission found the interference to be “necessary in a democratic society”.

In October 1991 the Commission held that there had been no violation of Article 10 in what was the second case concerning litigation arising from a book entitled *Spycatcher*, the memoirs of a former member of the British security services (see the *Observer and Guardian* and *Sunday Times* (No. 2) cases on page 13).<sup>86</sup>

In October 1992 the Commission considered a third application concerning publication in the press of extracts from *Spycatcher*. In this case the applicants complained of being found in contempt of court for publishing various extracts from the memoirs. The Commission declared the application inadmissible.<sup>87</sup>

In several decisions the Commission and the Court have confirmed their case-law on racist, xenophobic, negationist and anti-Semitic statements.<sup>88</sup> Referring in some cases to Article 17 of the Convention<sup>89</sup> and/or the exceptions to Article 10, §2, they have consistently declared applications inadmissible.<sup>90</sup>

In June 1995 the Commission found that a fine imposed on a lawyer as a disciplinary penalty for issuing a press release criticising a client’s detention conditions and the conduct of the proceedings was necessary and proportionate for maintaining the authority and impartiality of the judiciary. The Commission therefore declared the application inadmissible.<sup>91</sup>

85. *Ibid.*, p. 297.

86. Application No. 14644/89, *Times Newspapers Ltd and A. Neil v. the United Kingdom*, report of 8 October 1991, DR73, p. 41; Resolution of the Committee of Ministers DH (92) 15 of 15 May 1992.

87. Application No. 18897/91, *Times Newspapers Ltd and A. Neil v. the United Kingdom*, decision of 12 October 1992.

88. For an analysis of older case-law, see Council of Europe, *Case-law of the control organs of the European Convention on Human Rights concerning the phenomenon of incitement to racial hatred and xenophobia*, Strasbourg, 1995, Doc. H (95) 4.

89. Article 17 states:

“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.”



The balance of interests may in some cases afford greater protection to those targeted by journalists's criticisms, especially when the criticisms are aimed at private persons not holding any public office.<sup>92</sup>

In April 1998 the Commission found a violation of Article 10 in the case of *Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria*. The application concerned an order that a weekly publication publish a judgment finding that one of its articles criticising Austria's asylum policy had been defamatory. The Commission held that the facts on which the article was based had been properly established, the value judgment being unamenable to proof.<sup>93</sup>

In October 1998 the Commission declared inadmissible an application by a journalist who had been convicted of libel and publishing an underground periodical. He had published two libellous articles containing assertions he could not prove, in a periodical that had not been registered in accordance with the requirements of Italian law. Regarding the articles the Commission held that "adequate and diligent previous research", which the applicant could not show he had carried out, was one of the fundamental ethical rules of journalism.<sup>94</sup> Concerning the obligation to register a newspaper or periodical the Commission noted that the principal aim of the required formality was precisely to protect individuals

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90. See in particular *Jersild v. Denmark*, judgment of 23 September 1994, Series A No. 298, §35. See also the following applications: No. 21128/92, *U. Walendy v. Germany*, decision of 11 January 1995, DR80, p. 94; No. 25096/94, *O.E.F.A. Remer v. Germany*, decision of 6 September 1995, DR82, p. 117; No. 25062/94, *G. Honsik v. Austria*, decision of 18 October 1995, DR83, p. 77; No. 25992/94, *N.P.D., Bezirksverband München-Oberbayern v. Germany*, decision of 29 November 1995, DR84, p. 149; No. 24398/94, *F. Rebhandl v. Austria*, decision of 16 January 1996; No. 31159/96, *P. Marais v. France*, decision of 24 June 1996, DR86, p. 184; No. 26551/95, *D.I. v. Germany*, decision of 26 June 1996; No. 36773/97, *H. Nachtmann v. Austria*, decision of 9 September 1998; *H.J. Witzsch v. Germany* (decision), No. 41448/98, 20 April 1999; *Schimanek v. Austria* (decision), No. 32307/96, 1 February 2000; *Garaudy v. France* (decision), No. 65831/01, Reports 2003-IX; *Seurot v. France*, No. 57383/00, 18 May 2004; *Norwood v. the United Kingdom*, No. 23131/03, 16 November 2004, Reports 2004-XI; *Witzsch v. Germany* (decision), No. 7485/03, 13 December 2005.
91. Application No. 21861/93, *P. Zihlmann v. Switzerland*, decision of 28 June 1995, DR82, p. 12.
92. See application No. 20683/92, *A. Neves v. Portugal*, decision of 20 February 1995; application No. 28236/95, *F. Bocos Rodríguez v. Spain*, decision of 12 April 1996, DR85, p. 141; application No. 35125/97, *S. Panev v. Bulgaria*, decision of 3 December 1997; application No. 28202/95, *B.A. Middelburg, S. van der Zee and Het Parool v. Netherlands*, decision of 21 October 1998.
93. Application No. 26113/95, *Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria*, report of 16 April 1998; Committee of Ministers, Interim resolution DH (98) 378 of 12 November 1998.
94. Application No. 18902/91, *H.N. v. Italy*, decision of 27 October 1998, DR94, p. 21.



against libel. Consequently the interference with the applicant's right was "necessary in a democratic society".

The Court has ruled on the admissibility of several applications concerning measures (seizures and convictions) which, under the criminal code or the Prevention of Terrorism Act, the Turkish authorities had taken against the applicants (journalists, publishers or owners of publications) for publishing articles on official policies and actions and/or the problems in south-east Turkey.

Some of the applications were declared admissible,<sup>95</sup> while on other applications the Court took the view that the articles incited violence. It therefore concluded that these cases were inadmissible, on the ground that the measures imposed on the applicants were proportionate to the aim pursued and met a "pressing social need".<sup>96</sup>

In an application examined in December 2000, the director of a periodical and a journalist complained that they had been convicted of publishing an article, illustrated with photographs, on the private lives of two celebrities. The Court found that "the reports at the origin of the litigation, in focusing their content on purely private aspects of the lives of the persons concerned, could not be considered to have contributed to any debate of general interest to society, in spite of their celebrity status". The impugned measure was accordingly deemed necessary in a democratic society to protect the rights of others. The application was declared inadmissible.<sup>97</sup>

After a friendly settlement the Court struck from its list a case in which a periodical had been sentenced to pay damages for publishing articles and photographs concerning a person suspected of being responsible for a series of letter bombs sent to politicians.<sup>98</sup>

95. In this connection, see the following applications: *Varlı and others v. Turkey* (decision), No. 57299/00, 18 March 2004; *Güneş v. Turkey* (decision), No. 53916/00, 13 May 2004; *Karakoç v. Turkey* (decision), No. 53919/00, 22 March 2005; *Yıldız and others v. Turkey* (decision), No. 60608/00, 26 April 2005; *Tosun v. Turkey* (decision), No. 4124/02, 13 September 2005; *Erbakan v. Turkey* (decision), No. 59405/00, 10 November 2005.

96. In this connection, see the application *Temirkan v. Turkey* (decision), No. 41990/98, 19 September 2002.

97. *Campmany and Lopez Galiacho Perona v. Spain* (decision), No. 54224/00, 12 December 2000, Reports 2000-XII.



In October 2001 the Court determined a case in which a periodical and a journalist had been convicted of defamation after publishing a report containing critical remarks by a patient about her plastic surgeon. The case differed from *Bergens Tidende and others* (see above, page 25) in that there was no proof of the factual allegations made in the articles. The Court concluded that the periodical had not done enough to fulfil its obligation to verify the accuracy of the allegations. In addition, the applicants had not systematically identified the person responsible for the impugned statements, an omission which could have been taken to mean that the newspaper endorsed them. Protecting the surgeon's reputation took precedence over the applicants' right to freedom of expression and the application therefore declared inadmissible.<sup>99</sup>

In a case examined in February 2002 a newspaper manager complained of being convicted of defamation for an article accusing a mayor of seeking reimbursement of allegedly false invoices. The Court noted that factors to be considered in a defamation case included the seriousness of the accusations, whether there had been adequate previous research, whether there was a factual basis for the accusations, the journalist's good faith, and observance of journalistic ethics. In this case the national courts had found that there had not been adequate research prior to publication of the article. In this regard the Court noted that the applicant had failed to show that the allegations made in the article were true, and it confirmed that the grounds for his conviction were relevant and sufficient. The application was declared inadmissible.<sup>100</sup>

In July 2002 the Court ruled on a case in which the sole director of a company which owned a newspaper had been convicted of publishing an article identifying a rape victim. The Court noted that the law did not contain an absolute prohibition on disclosing the identity of rape victims. It also noted that owners of publications could legitimately be held responsible for published material that impinged on the rights of others. In the

98. *Kurier Zeitungsverlag und Druckerei GmbH v. Austria* (decision), No. 48481/99, 20 March 2001.

99. *Verdens Gang and Aase v. Norway* (decision), No. 45710/99, 16 October 2001, Reports 2001-X.

100. *Gaudio v. Italy* (decision), No. 43525/98, 21 February 2002.



circumstances the applicant's conviction was held not to be disproportionate and the application was declared inadmissible.<sup>101</sup>

An application examined in November 2002 concerned an order requiring a publisher to pay damages for an article identifying a police officer against whom court proceedings had been pending following the death of a foreign national during deportation. Like the national courts, the Court held that the police officer's private interests, namely his right to be presumed innocent, took precedence over the public interest in knowing his identity. The applicant company could have criticised deportation practices without disclosing the police officer's identity. As the impugned interference was therefore not disproportionate to the aim pursued the application was declared inadmissible.<sup>102</sup>

In March 2003 the Court examined an application concerning the publication of an article comparing a journalist to Goebbels, the head of the Nazi regime's propaganda machine. Although the comparison had been made in political debate and preceded by very virulent criticisms on the journalist's part, the Court held that the insult overstepped the bounds of acceptable criticism, even in the context of a debate between two public figures. It declared the application inadmissible.<sup>103</sup>

In April 2003 the Court ruled on an application from a journalist who had published articles accusing a minister of the church of misappropriating funds intended for the Latvian Orthodox Church. This accusation was coupled with an allegation that the money had been entrusted to an enterprise involved in organ trafficking, a highly controversial activity from both the ethical and the legal standpoint. As the case involved a specific factual allegation against a specified person the applicant ought to have anticipated that she would have to substantiate the allegations, which the national courts had judged to be unfounded. The question remained whether the credibility of the journalist's sources might exempt her from having to investigate the truth of the accusations. The Court

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101. *Brown v. United Kingdom* (decision), No. 44223/98, 2 July 2002.

102. *Wirtschafts-Trend Zeitschriften Verlagsgesellschaft mbH v. Austria (No. 2)* (decision), No. 62746/00, 14 November 2002, Reports 2002-X.

103. *Krutil v. Germany* (decision), No. 71750/01, 20 March 2003.



noted that the parties to what was a very high-profile dispute forming the backdrop to the journalist's allegations regularly published mutual accusations and criticisms. In those circumstances any journalist wishing to repeat such accusations had a particular duty of care. Accordingly, it had been incumbent on the applicant to verify that the allegations were true, by gathering additional information herself and ascertaining the other party's version of events if need be. Further, the accusations were particularly serious, especially given the defamation victim's special position within society as a churchman. The journalist had thus failed in her duty to provide society with accurate, credible information and the application was inadmissible.<sup>104</sup>

In May 2003 the Court declared inadmissible an application from a magazine director and publishing company, both convicted of publishing a number of articles in which a celebrity's former nanny described her life and relations with the celebrity and the latter's young daughter during the time she was looking after the child. The Court found that the articles focused on exclusively private aspects of the lives of the celebrity and her family. They did not contribute to any debate of public interest, despite the celebrity's being in the public eye.<sup>105</sup>

In July 2003 the Court declared inadmissible an application from a magazine publishing company convicted of interfering with a celebrity's private life and infringing her right to her image. The applicant company complained of being ordered to publish the judgment concerning its infringement of the celebrity's rights. It claimed that the interference was disproportionate to the injury suffered by the person mentioned in the impugned article. It argued that a measure such as an order to publish the judgment amounted to a penalty rather than compensation. The Court held that, on the contrary, the order to publish the judgment was proportionate to the injury suffered and might afford the victim appropriate compensation by informing the public of her objections her image's being published without her consent.<sup>106</sup>

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104. *Harlanova v. Latvia* (decision), No. 57313/00, 3 April 2003.

105. *Bou Gibert and El Hogar y La Moda SA v. Spain* (decision), No. 14929/02, 13 May 2003.



In an application examined in July 2003 a company which published a weekly magazine complained about its conviction for interfering with a public figure's private life and infringing his right to his image. The Court held that as the sole purpose of the impugned article was to satisfy the curiosity of a particular readership regarding details of the private lives of the couple in question, it made no contribution whatsoever to any debate of general interest to society even though the couple were known to the public. Whenever comment or the infringement of a person's right to his or her image did not go beyond the personal sphere, restriction of freedom of expression ought to be interpreted broadly. The application was declared inadmissible.<sup>107</sup>

In September 2003 the Court declared admissible an application from the owner and publisher of a Catholic magazine convicted of defamation after publishing an anonymous letter criticising an eminent member of the Catholic church.<sup>108</sup>

The Court concluded that an application from the regional branch of an Austrian political party convicted of defaming a member of another party in the press was inadmissible. The statements at issue had been published in response to defamatory comments published by the political opponent in question, who had withdrawn them following a court decision. The Court held that although the statements published by the applicant had been made in the context of political debate, they had overstepped the bounds of what might have been deemed an acceptable response. The criticisms could have been expressed in less demeaning terms, thereby causing less damage to the opponent's political career.<sup>109</sup>

In a case determined in October 2003 a journalist complained about his conviction for defaming the owners of a competing radio station in a radio broadcast. The Court noted that the applicant had accused the owners of the competing radio station of conduct of which they had

106. *Société Prisma Presse v. France* (decision), No. 66910/01, 1 July 2003.

107. *Société Prisma Presse v. France* (decision), No. 71612/01, 1 July 2003.

108. *Albert-Engelmann-Gesellschaft mbH v. Austria* (decision), No. 46389/99, 15 September 2003.

109. *Freiheitliche Partei Österreichs, Landesgruppe Niederösterreich v. Austria* (decision), No. 65924/01, 9 October 2003.



never been convicted and of which the domestic courts had found no evidence. The offending remarks thus could not be deemed to contribute to any kind of public debate. Nor, in the circumstances, could the applicant rely on his good faith or observance of journalistic ethics. It followed that the right of the competing radio station's owners to protection of their honour and reputation outweighed the applicant's interest in broadcasting such opinions. In the absence of any infringement of the right to freedom of expression, the application was declared inadmissible.<sup>110</sup>

In November 2003 the Court concluded that an application from the leader of an Islamic sect convicted of inciting others to commit offences and incitement to religious hatred by publishing his views in the press was inadmissible. Given their content and violent tone, the applicant's statements amounted to hate speech and glorification of violence and were thus incompatible with the fundamental values of justice and peace to which the preamble to the Convention subscribed. In the report at issue the applicant had also named one of the persons alluded to, a fairly well-known writer who was easily recognisable by the general public and had therefore been placed at risk of physical violence. The severity of the penalty (four years and two months in prison, together with a fine) was justified as a deterrent that might be considered necessary in the context of preventing public incitement to commit offences.<sup>111</sup>

In January 2004 the Court ruled admissible an application concerning a defamation conviction for the publication in the media of a statement alleging abuse of power by the Deputy Chairman of the Sejm.<sup>112</sup>

The Court held that the conviction for defamation of an applicant who had published an open letter in a local newspaper criticising the management of a medical clinic was necessary in a democratic society. No factual basis for the applicant's remarks had been established and the terms used were clearly offensive to the person in question.<sup>113</sup>

110. *Maroglou v. Greece* (decision), No. 19846/02, 23 October 2003.

111. *Gündüz v. Turkey* (decision), No. 59745/00, judgment of 13 November 2003, Reports 2003-XI.

112. *Malisiewicz-Gasior v. Poland* (decision), No. 43797/98, 29 January 2004.

113. *Alves Costa v. Portugal* (decision), No. 65297/01, 25 March 2004.



In May 2004 the Court ruled that an application concerning the conviction of the applicant, the editor-in-chief of a daily newspaper, following the publication of an article in the form of an interview with a non-commissioned officer about his experience in south-east Turkey was admissible. The domestic courts had found that the article incited hatred and hostility by drawing distinctions based on racial and regional differences, resulting in public disaffection with military service. The applicant had received a prison sentence and been ordered to pay a fine, and publication of the newspaper had been suspended for 20 days.<sup>114</sup>

The Court declared admissible a case concerning the applicants' conviction for defamation and an order to pay damages to members of a regional government following the publication of an address criticising government policy.<sup>115</sup>

Also in May 2004, in a decision ruling an application inadmissible, the Court held that criminal convictions for defamation, an order to pay a fine and damages, confiscation of remaining stocks of the newspaper in question and an order to publish the judgment were proportionate to the legitimate aim pursued. A journalist had written an article on a film about a letter bomb case but had gone beyond the content of the film, emphasising the involvement of the then interior minister in deciding what lines of enquiry should be pursued in order to identify the culprits. The domestic courts had held that the applicant had not simply reported the content of the film but had created his own version of events. In the Court's view this involved publication of facts rather than value judgments and it therefore had to examine whether the applicant had verified the facts. The Court stated that it was convinced by the domestic courts' finding that he had not. It concluded that the interference with the applicant's freedom of expression was not disproportionate to the legitimate aim pursued.<sup>116</sup>

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114. *Erol v. Turkey* (decision), No. 47796/99, 13 May 2004.

115. *Dyuldin and Kislov v. Russia* (decision), No. 25968/02, 13 May 2004.

116. *Krone Verlag GmbH und Walter v. Austria* (decision), No. 36961/02, 13 May 2004.



In May 2004, in a decision ruling a case inadmissible, the Court held that a prohibition on re-publishing a person's picture without mentioning that he had been acquitted in one case and released on parole in another did interfere with the applicant's freedom of expression but could be justified in the circumstances of the case. The applicant broadcasting company had published the picture even though it added nothing whatsoever to the report. In addition, the prohibition imposed by the national court was limited in scope. The publication of the picture had reminded the public of a person's appearance three years after his conviction, when he was in the process of re-integrating into society after being released on parole. The interference was thus necessary and proportionate to the legitimate aim of protecting the reputation or rights of others.<sup>117</sup>

The Court ruled that a case in which the applicant, a television journalist, had been convicted of defamation after asking local-election candidates a question during a television programme was admissible.<sup>118</sup>

In June 2004 it held that the conviction of the applicant, a journalist, for defamation following the publication of various articles on court proceedings brought by a public prosecutor's wife against her neighbours could be regarded as necessary in a democratic society. The Court emphasised that at no stage had the applicant produced any proof of her allegations, which the national courts had also found to be untrue. The various articles thus amounted to a gratuitous personal attack on the public prosecutor's reputation. They were not comment on the administration of justice. The Court referred to the newspaper's circulation and the leniency of the penalty in finding that the interference with freedom of expression was proportionate to the aim of protecting the reputation of others. The application was declared inadmissible.<sup>119</sup>

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117. *Österreichischer Rundfunk v. Austria* (decision), No. 57597/00, 25 May 2004.

118. *Filatenko v. Russia* (decision), No. 73219/01, 3 June 2004.

119. *Chernysheva v. Russia* (decision), No. 77062/01, 10 June 2004.



The Court declared admissible a case concerning a published article on a police officer's resignation and the court decisions delivered by his wife, a judge by profession.<sup>120</sup>

It ruled to be inadmissible an application concerning a fine and a damages award arising from a published article on allegedly improper conduct of the deputy dean of a military academy.<sup>121</sup> Although the article was part of a debate of general interest, it had disseminated incorrect information, thereby distorting the truth and undermining the deputy dean's reputation.

In a decision handed down in December 2004 the Court ruled that an application concerning a conviction for defamation and insult following an article on, *inter alia*, the homosexual relationship between a politician and a public servant was admissible.<sup>122</sup>

The Court declared admissible a case concerning a journalist's conviction for defamation following an article criticising changes in the rules governing mayoral elections and the management methods employed by a mayor.<sup>123</sup>

In a decision of December 2004 the Court declared admissible an application concerning an order to pay damages and to publish the conviction judgment following an article on corruption among several members of the drugs squad and the proceedings brought against them.<sup>124</sup>

In February 2005 the Court examined an application from a journalist and a newspaper proprietor convicted of defaming a judge. The applicants complained of a disproportionate infringement of their freedom of expression. The Court declared the application admissible.<sup>125</sup>

In March 2005 the Court declared admissible an application from a politician ordered to pay damages for defaming a mayor in the press.<sup>126</sup>

120. *Stângu and Scutelnicu v. Romania* (decision), No. 53899/00, 12 October 2004.

121. *Stângu v. Romania* (decision), No. 57551/00, 9 November 2004.

122. *Porubova v. Russia* (decision), No. 8237/03, 9 December 2004.

123. *Krasulya v. Russia* (decision), No. 12365/03, 9 December 2004.

124. *Godlevskiy v. Russia* (decision), No. 14888/03, 9 December 2004.

125. *Kobenter and Standard Verlag GmbH v. Austria* (decision), No. 60899/00, 1 February 2005.

126. *Almeida Azevedo v. Portugal* (decision), No. 43924/02, 15 March 2005.



In May 2005 it declared admissible an application concerning a journalist's conviction of inciting breach of professional confidence by asking a court administrative assistant to disclose information about the criminal records of people arrested during an investigation into a very high-profile burglary.<sup>127</sup>

In a case examined in May 2005 it ruled admissible an application from a journalist convicted of publishing a strategic document from the Swiss United States ambassador which was classified as confidential.<sup>128</sup>

In June 2005 it declared admissible an application from a journalist convicted of publicly defaming a group of people on account of their religious affiliation. The applicant had published an article arguing that certain positions adopted by the Catholic church had "laid the ground in which the idea and fulfilment of Auschwitz germinated".<sup>129</sup>

In July 2005 the Court declared inadmissible an application concerning a newspaper's refusal to publish a writer's response to literary reviews by another writer which had appeared in that newspaper. Firstly the Court noted that the right of reply, as an important element of freedom of expression, fell within the scope of Article 10. However, there were limits to freedom of expression and it did not guarantee citizens unfettered access to the media in order to express their opinions. As a general principle, the media were free to exercise editorial discretion except in exceptional circumstances such as publication of a retraction, an apology or a judgment in a defamation case. The state's only obligation, therefore, was to ensure that a denial of access to the media was not an arbitrary or disproportionate interference with an individual's freedom of expression, and that any such denial could be challenged in the competent domestic courts. The applicant had been able to submit his reply to the newspaper and the refusal to publish it had been based solely on the obscenity and abusiveness of his remarks about the critic. He had been given a chance to modify his reply but had not done so. He had subse-

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127. *Dammann v. Switzerland* (decision), No. 77551/01, 3 May 2005.

128. *Stoll v. Switzerland* (decision), No. 69698/01, 3 May 2005.

129. *Giniewski v. France* (decision), No. 64016/00, 7 June 2005.



quently had an opportunity to establish his right of reply in the domestic courts. It was clear from all this that the state had not failed in its positive duty to protect the applicant's freedom of expression.<sup>130</sup>

In August 2005 the Court declared admissible an application from a journalist who had been ordered to pay damages for defaming a deputy mayor in the press.<sup>131</sup>

In a further case examined in August 2005 it ruled admissible an application from a journalist ordered to pay damages for defaming a governor in the press.<sup>132</sup>

In the *Verlagsgruppe News GmbH v. Austria* case<sup>133</sup> the Court declared admissible an application from the owner and publisher of a weekly magazine who disputed the forfeiture of an issue of his magazine containing allegedly biased coverage of defamation proceedings in which the victims complained of having been described in another publication as "spiritually depraved" and "dastardly".

In a case declared admissible in September 2005<sup>134</sup> the Court examined an application from a company that published a weekly magazine. The company contested an injunction preventing it from publishing the picture of the managing director of an enterprise in the context of reports on investigations into his involvement in a tax evasion offence.

The *Ivanciuc v. Romania* case<sup>135</sup> concerned a journalist who had defamed a politician in the press. The Court pointed out that journalists were under an obligation to provide a sufficient factual basis for such allegations, even where they constituted value judgments. The applicant's assertions that a deputy prefect had removed the mayor of a municipality and driven under the influence of alcohol had no factual basis. His use of the word "executioner" in relation to the deputy prefect could be construed as a value judgment but, despite the satirical nature of the publication, was likely to cause offence to the complainant, who had been tried

130. *Melnychuk v. Ukraine* (decision), No. 28743/03, 5 July 2005.

131. *Dabrowski v. Poland* (decision), No. 18235/02, 25 August 2005.

132. *Chemodurov v. Russia* (decision), No. 72683/01, 30 August 2005.

133. *Verlagsgruppe News GmbH v. Austria* (decision), No. 76918/01, 8 September 2005.

134. *Verlagsgruppe News GmbH v. Austria* (decision), No. 10520/02, 8 September 2005.

135. *Ivanciuc v. Romania* (decision), No. 18624/03, 8 September 2005.



and found not guilty. Lastly, although a criminal fine had been imposed on the applicant, both the fine and the damages awarded were token amounts. The Court concluded that the applicant's complaint was manifestly ill-founded and declared the application inadmissible.

In *Krone Verlags GmbH v. Austria*<sup>136</sup> the Court ruled admissible an application from a newspaper owner who had been convicted of defamation in print following an article repeating criticisms of two beauty-contest winners's allegations of rape and harassment by a prince. In particular the article quoted the daughter of the managing director of an Austrian public relations agency as saying that the rape allegation was unfounded and that the women simply wanted to make money out of the incident.

In the *Weigt v. Poland* case<sup>137</sup> the Court examined the conditional sentence imposed on the editor-in-chief of a publication for defaming a municipal councillor in the press. The applicant had been ordered to apologise in writing. Noting that the applicant had made statements of fact requiring supporting evidence and that no such evidence had ever been produced, the Court found that the restriction on freedom of expression was not in breach of Article 10, especially as the penalty imposed on the applicant was very lenient and therefore proportionate to the aim pursued.

In the *Wieszczyk and Stowarzyszenie Mieszkańców v. Poland* case<sup>138</sup> the Court examined an application from an association of village residents and a representative of that association regarding the forfeiture of leaflets urging people not to vote for certain candidates (one of whom was named) suspected of involvement in dubious business deals or disqualified from sitting on the municipal council. The application also concerned an order requiring the applicants to publish apologies for distributing the leaflets. Firstly, the Court held that the domestic legal mechanism for rectifying inaccurate information about candidates during an election was not an unreasonable restriction in the context of public-interest debate. As

136. *Krone Verlags GmbH v. Austria* (decision), No. 72331/01, 22 September 2005.

137. *Weigt v. Poland* (decision), No. 74232/01, 11 October 2005.

138. *Wieszczyk and Stowarzyszenie Mieszkańców v. Poland* (decision), No. 44320/02, 11 October 2005.



the impugned remarks were statements of fact requiring proof and no such proof had ever been produced, the restriction on freedom of expression was not in breach of Article 10. The application was therefore manifestly ill-founded.

In *Times Newspapers Ltd v. the United Kingdom*<sup>139</sup> the Court examined a defamation conviction resulting from the publication of two articles about a Russian businessman in the newspaper *The Times*, both in hard copy and on its website. The applicant relied on the defence of qualified privilege, contending that she had a duty to publish the information contained in the articles even without verifying the truth of the allegations. The Court said that exceptional grounds were needed to exempt a newspaper from its obligation to verify factual statements that were defamatory of private individuals. Here the public interest in receiving the information did not take precedence over the need to protect the reputation of the person mentioned in the articles. This part of the application was therefore inadmissible.

In October 2005 the Court declared admissible an application from a journalist and a television station ordered to pay a fine and damages for defamation following the broadcast of an interview insinuating that the president of the Portuguese Football League controlled the referees of football matches played by the club he managed.<sup>140</sup>

In *Radio Twist a.s. v. Slovakia*<sup>141</sup> the Court declared admissible an application from a broadcasting company ordered to pay damages and apologise for broadcasting an illegal recording of a telephone conversation in which the state secretary at the Ministry of Justice had taken part.

In *Klein v. Slovakia*<sup>142</sup> the Court declared admissible an application from a journalist convicted of defamation and ordered to pay a fine following the publication of an article criticising statements made by an archbishop who had demanded that the poster advertising the film *The People vs. Larry Flynt* be banned.

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139. *Times Newspapers Ltd v. the United Kingdom* (decision), Nos. 23676/03 and 3002/03, 11 October 2005.

140. *Colaço Mestre v. Portugal* (decision), Nos. 11182/03 and 11319/03, 18 October 2005.

141. *Radio Twist, a.s. v. Slovakia* (decision), No. 62202/00, 8 November 2005.

142. *Klein v. Slovakia* (decision), No. 72208/01, 8 November 2005.



In the *Romanenko and others v. Russia* case<sup>143</sup> the Court ruled that an application from newspaper proprietors convicted of defamation following an article that contained extracts from a non-confidential government document (a letter approved at a regional conference on the rational use and protection of forests) was admissible.

In *Lomakin v. Russia*<sup>144</sup> the Court examined an application from a lawyer convicted of defaming a judge in two published articles accusing her of taking advantage of her position in order to obtain a flat. Noting that the applicant's remarks constituted statements of fact requiring supporting evidence and that no such evidence had ever been produced, the Court held that the remarks amounted to a personal attack rather than a comment on the administration of justice. It ruled the application inadmissible.

In *Obukhova v. Russia*<sup>145</sup> the Court declared admissible an application from a journalist prohibited from publishing information or covering a claim for damages in relation to a traffic accident caused by a judge (who had not been on duty at the time).

In the *Vérités santé pratique Sarl v. France* it examined an application from a company that published a health magazine. The company had had the renewal of its registration with the Joint Committee on Press Publications and Press Agencies (CPPAP) refused on the grounds that unverified medical information had been published in the magazine. The CPPAP delivers opinions on whether magazines qualify for tax reductions and discounted postal rates, concessions which facilitated the applicant's publishing work. The Court acknowledged that the refusal was an interference in that the withdrawal of the concessions had resulted in changes to the magazine, thereby affecting the applicant's freedom to choose how to express itself.<sup>146</sup> Nevertheless the Court held that the interference was necessary in a democratic society in that it met a social need for accurate information to be supplied to the public, particularly in the health field,

143. *Romanenko and others v. Russia* (decision), No. 11751/03, 17 November 2005.

144. *Lomakin v. Russia* (decision), No. 11932/03, 17 November 2005.

145. *Obukhova v. Russia* (decision), No. 34736/03, 1 December 2005.

146. *Vérités santé pratique SARL v. France* (decision), No. 74766/01, p. 12, 1 December 2005.



without depriving the applicant of its freedom of expression. There was a relationship of reasonable proportionality between the restrictions on freedom of expression and the legitimate aim pursued and the application was therefore inadmissible.

*Nordisk Film & TV A/S v. Denmark*<sup>147</sup> concerned a court order requiring a television production company to hand over material to the police about a person (an alleged paedophile) who was under police investigation. The material consisted of notes taken by a journalist and unedited footage from a television report on paedophilia in Denmark. The applicant pleaded confidentiality of journalists' sources. The Court held that the impugned order was an interference with freedom of expression but that its case-law on the protection of journalists' sources did not apply because of the nature of the material. The order was necessary in a democratic society, in particular owing to the general requirement deriving from Articles 1 and 3 of the Convention that states take positive measures to protect individuals within their jurisdiction from any inhuman or degrading treatment. The interference was not disproportionate to the aim pursued, being confined to extracts concerning a specified person and less drastic than other possible measures such as seizure of the material. The application was accordingly declared inadmissible.

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147. *Nordisk Film & TV A/S v. Denmark* (decision), No. 40485/02, 8 December 2005.



## B. Regulating broadcasting

### 1. Judgments of the Court

The right to freedom of expression and information recognised in Article 10 includes freedom to receive and impart information and ideas through broadcasting.<sup>148</sup> The third sentence of Article 10, §1 provides, however: “This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.”<sup>149</sup>

In March 1990 the Court delivered a judgment on electronic media for the first time, in the *Groppera Radio AG and others* case. It concluded that the Swiss authorities’ ban on rebroadcasting of programmes from Italy by Swiss cable network operators had not infringed those companies’ right to impart information and ideas as guaranteed by Article 10.

The Court decided in particular that the ban had not gone beyond the margin of appreciation allowing national authorities to interfere with exercise of freedom of expression: it was not a form of censorship directed against programmes’ content or tendencies but a measure taken against a station which it was reasonable for the Swiss authorities to regard as, in reality, a Swiss station operating from the other side of the border in order to circumvent the statutory telecommunications system in force in Switzerland.<sup>150</sup>

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148. See application No. 6452/74, *Sacchi v. Italy*, decision of 12 March 1976, DR5, p. 43.

149. Application No. 18033/91, *Cable Music Europe Ltd v. the Netherlands*, decision of 29 November 1993; application No. 21472/93, *X. SA v. the Netherlands*, decision of 11 January 1994, DR76, p. 129.

150. *Groppera Radio AG and others v. Switzerland*, judgment of 28 March 1990, Series A No. 173.



In May 1990 the Court delivered its judgment in the *Autronic AG* case, concluding that there had been a violation of Article 10. The case concerned the Swiss authorities's refusal to allow a home electronics company to receive uncoded television programmes from a Soviet telecommunications satellite by means of a satellite dish, the refusal being based on absence of the broadcasting state's consent.

While noting that the refusal pursued legitimate aims – preventing disorder in telecommunications and preventing disclosure of confidential information – the Court held that the Swiss authorities' action fell outside the margin of appreciation allowing them to interfere with freedom of expression. The nature of the broadcasts in itself precluded describing them as not being intended for general use by the public, the risk of obtaining secret information by means of dish aerials being non-existent. Noteworthy, the Court referred here to technical and legal developments in satellite broadcasting and in particular to the European Convention on Transfrontier Television.<sup>151</sup>

In a judgment delivered in November 1993, the Court for the first time examined a public monopoly on broadcasting in the case of *Informationsverein Lentia and others*, which concerned Austria. It found a violation of Article 10.

In this case the Court accepted that the Austrian monopoly system was capable of contributing to the quality and balance of programme output through the supervisory powers over the media which it conferred on the national regulatory authorities. The system therefore had an aim consistent with the third sentence of Article 10, §1. However, the Court held that the interferences which the monopoly had caused the applicants were “not necessary in a democratic society”:

- the Court first pointed out the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it imparted information and ideas of general interest, which the public, moreover, was entitled to receive;

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151. *Autronic AG v. Switzerland*, judgment of 22 May 1990, Series A No. 178.



- secondly, pluralism, of which the state was the ultimate guarantor, was an especially important principle in relation to audiovisual media, whose programmes were often broadcast very widely;
- thus the far-reaching character of the restrictions which a public monopoly imposed on freedom of expression meant that they could only be justified if they met a *pressing* need. But as a result of the technical progress made in recent decades, such restrictions were no longer justifiable by scarcity of frequencies and channels. They had also lost much of their *raison d'être* because of the many more foreign programme schedules aimed at Austrian audiences and the decision of the Administrative Court to recognise cable retransmission of them as legal. Finally, and above all, it could not be argued that there were no equivalent less restrictive solutions; for example, some countries either issued licences on specified conditions of variable content or made provision for forms of private participation in the activities of the national corporation. Fears that the Austrian market was too small to sustain a sufficient number of private stations for concentrations and “private monopolies” to be avoided were groundless, being contradicted by the experience of several European countries, comparable in size to Austria, where public and private stations coexisted under national rules backed up by measures preventing the development of private monopolies.<sup>152</sup>

The *Telesystem Tyrol Kabeltelevision* case was struck off the Court’s list after a friendly settlement was reached between the government and the applicant. The Commission report had found a violation of Article 10. The government had refused to allow the applicant company, which received television broadcasts and retransmitted them by cable, to broadcast information actively. Since the Commission’s report the Austrian Constitutional Court has legalised such broadcasts.<sup>153</sup>

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152. *Informationsverein Lentia and others v. Austria*, judgment of 24 November 1993, Series A No. 276, §§32-33 and 38-42.

153. *Telesystem Tyrol Kabeltelevision v. Austria*, judgment of 9 June 1997, Reports 1997-III.



In the *Radio ABC* case (judgment delivered October 1997) the Court returned to the broadcasting monopoly in Austria, previously examined in *Informationsverein Lentia*. The Court concluded by “[noting] with satisfaction that Austria [had] introduced legislation to ensure the fulfilment of its international obligations”<sup>154</sup> – a law on regional broadcasting, which put an end to the monopoly situation in Austria on its entry into force in 1997.

The *Tele 1 Privatfernsehgesellschaft mbH* case, determined in September 2000, concerned a refusal to grant a private company a licence to set up and operate a terrestrial television transmitter in the Vienna region. The Court concluded that there had been a violation of Article 10 during the period from 1993 to 1996, when there had been no provision in the law for a television broadcasting licence to be granted to anyone but the national broadcasting corporation.

Concerning the 1996-97 period, however, the Court found that there had been no violation of Article 10. Following the decision of the Constitutional Court on 27 September 1995, private broadcasting companies had been free to create and transmit programmes by cable without restriction, while terrestrial broadcasting remained the preserve of the national broadcasting corporation. The applicant firm had criticised this situation, alleging that cable television was not comparable with terrestrial television in terms of availability to viewers. The Court rejected this argument on the ground that almost every home in Vienna could be connected to the cable network. Cable was therefore a viable alternative to terrestrial television for private broadcasters, and the interference with the applicant company’s right to communicate information was not disproportionate to the aims pursued by the constitutional law on broadcasting.<sup>155</sup>

In June 2001 the Court ruled on the *Vgt Verein gegen Tierfabriken* case concerning refusal by the authorities to broadcast a television advertisement via the Swiss Radio and Television Company because of its “manifestly political nature”. The advertisement attacked industrial breeding of certain animals.

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154. *Radio ABC v. Austria*, judgment of 20 October 1997, Reports 1997-VI, §37.

155. *Tele 1 Privatfernsehgesellschaft mbH v. Austria*, No. 32240/96, judgment of 21 September 2000.



The Court acknowledged that the ban on advertising of a political nature was aimed at preventing financially strong groups from obtaining a competitive advantage in politics. However, the ban applied only to certain media and, in the Court's opinion, did not answer a particularly pressing social need. Furthermore, the applicant association was not a financially powerful group bent on restricting the broadcaster's independence, unduly influencing public opinion or compromising equality of opportunity between the different social forces. The Court found that the reasons adduced by the national authorities to justify the decision were not "relevant and sufficient". Nor was the language used in the advertisement disturbing enough to justify refusing to broadcast it, and the only way for the association to reach the whole population was through the programmes of the Swiss Radio and Television Company. Consequently the refusal had not been "necessary in a democratic society" and contravened Article 10.<sup>156</sup>

The Court found no violation of Article 10 in the *Demuth* case, concerning a refusal by the Swiss Federal Council to grant a licence for cable distribution of a specialist television programme about cars. At the outset the Court pointed out that the broadcast licensing system in Switzerland was consistent with the third sentence of Article 10 §1 since the powers it gave the government helped improve output quality and balance. As to the need for the refusal, the focus of the applicant's proposed programme did not meet the conditions of the Radio and Television Act. The refusal decision also stated that the applicant might be granted a licence if certain changes were made to the programme's content. The authorities – guided by the policy that television programmes must to a certain extent also serve the public interest – had therefore not exceeded their margin of appreciation.<sup>157</sup>

In November 2002 the Court ruled on the *Informationsverein Lentia* case. This concerned a refusal to grant an operating licence to an association wishing to cable-broadcast radio and television programmes exclu-

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156. *Vgt Verein gegen Tierfabriken v. Switzerland*, No. 24699/94, judgment of 28 June 2001, Reports 2001-VI.  
157. *Demuth v. Switzerland*, No. 38743/97, judgment of 5 November 2002, Reports 2002-IX.



sively to residents of a housing estate. The association alleged that despite the decision in the *Informationsverein Lentia and others* case of 24 November 1993 it was still impossible for it to obtain such a licence. The case was struck off the list following a friendly settlement. The Court noted, however, that the agreement reached between the parties applied only to the complaints relating to the period from 18 August 1994 to 1 August 1996<sup>158</sup> as the situation forming the basis of the applicant's complaints had ceased to exist on that date.<sup>159</sup>

In a judgment delivered in July 2003 the Court held that a prohibition on broadcasting a radio advertisement for a religious meeting could be justified under Article 10.<sup>160</sup> Firstly, the impact of the audiovisual media was more immediate and powerful than that of the print media. Secondly there was an important difference between advertising, which tended to be partial, and programming, which was not broadcast because a party had purchased airtime and which must be impartial, neutral and balanced<sup>161</sup>. Finally, there did not appear to be a clear consensus among member states regarding the broadcasting of religious advertisements.

## 2. Decisions and reports of the Commission and the Court

The question of licensing systems was also touched upon in the case-law of the Commission. In a 1968 decision it stated that the term "licensing" in Article 10 §1, "cannot be understood as excluding in any way a public television monopoly as such".<sup>162</sup>

However, in a 1976 decision concerning the national cable monopoly in Italy it expressed a willingness to reconsider its position on national monopolies in the electronic media field.<sup>163</sup>

158. Date on which the Austrian Constitutional Court's decision of 27 September 1995 entered into force; see page 64.

159. *Informationsverein Lentia v. Austria (No. 2)* (friendly settlement), No. 37093/97, judgment of 28 November 2002.

160. *Murphy v. Ireland*, No. 44179/98, judgment of 10 July 2003, Reports 2003-IX (extracts) (see also p. 93).

161. *Ibid.*, §74.

162. Application No. 3071/67, *X v. Sweden*, decision of 7 February 1968, Reports 26, p. 71.

163. Application No. 6452/74, *Sacchi v. Italy (Tebebiella case)*, decision of 12 March 1976, DR5, p. 43.



In December 1978, in a case concerning criminal proceedings against people who had organised a sticker campaign to advertise illegal broadcasting, the Commission pointed out that a state must legitimately be able, under the Convention, to adopt measures against those who attempted to circumvent the licensing requirements specifically referred to in Article 10 §1, *in fine*.<sup>164</sup>

In a decision of May 1984 it found inadmissible an application concerning a ban on certain television-programme distributors' distributing programmes produced by the applicant. Since Article 10 §1, authorised the state to require the licensing of broadcasting enterprises, it was legitimate for it to enact measures to prevent circumvention of the conditions attaching to a particular licence. However, the Commission did establish as a principle that "the right to broadcast includes freedom from interference with the reception of radio broadcasts".<sup>165</sup>

The Commission again dealt with licensing systems in March 1986, declaring inadmissible an application from presenters working for a radio station which had been broadcasting without obtaining the necessary licence from the Flemish Community of Belgium. It held:

Since a State may enact legislation requiring the licensing of broadcast enterprises, it must also be legitimate for the State to enact legislation which ensures compliance with the licence in question, in particular by preventing means of circumventing the conditions stated in the licence.<sup>166</sup>

However, in a decision of October 1986 concerning a complaint about a prohibition on granting a local broadcasting licence to certain stations fulfilling the legal conditions for obtaining such a licence, the Commission held:

States do not have an unlimited margin of appreciation concerning licensing systems. Although broadcasting enterprises have no guarantee

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164. Application No. 8266/78, *X v. United Kingdom (Radio Caroline)*, decision of 4 December 1978, DR16, p. 190.

165. Application No. 10799/84, *Radio 24 AG, S., W. and A. v. Switzerland*, decision of 17 May 1984, DR37, p. 236.

166. Application No. 10405/83, *X and others v. Belgium (Radio Scorpio)*, decision of 5 March 1986. See also application No. 9675/82, *Freie Rundfunk AG i GR v. the Federal Republic of Germany*, decision of 4 March 1987.



of any right to a licence under the Convention, it is nevertheless the case that the rejection by a State of a licence application must not be manifestly arbitrary or discriminatory, and thereby contrary to the principles in the preamble to the Convention and the rights secured therein. For this reason, a licensing system not respecting the requirements of pluralism, tolerance and broad-mindedness without which there is no democratic society would thereby infringe Article 10 §1 of the Convention.<sup>167</sup>

In May 1989 the Commission ruled inadmissible an application concerning a limitation on the reception of certain local radio stations for subsequent retransmission by cable.<sup>168</sup>

In June 1991 it declared inadmissible another application concerning a cable network prohibited from retransmitting a radio station's programme schedule.<sup>169</sup>

In July 1991 a complaint was submitted by a non-profit foundation of Dutch radio and television broadcasters about being compelled by the organisers of football matches to pay for the right to broadcast the matches. The Commission held that the respondent government was not obliged under Article 10 to ensure a right to free reporting of such matches as football matches were funded to a large extent by the entrance fees paid by the general public and by the fees which television and radio paid for broadcasting rights to the matches. The application was therefore inadmissible.<sup>170</sup>

In September 1992 the Commission declared inadmissible an application concerning broadcasting of radio programmes without permission. The applicant had complained of the ban and the subsequent seizure of material.<sup>171</sup>

167. Application No. 10746/84, *Verein Alternatives Lokalradio Bern and Verein Radio Dreyeckland Basel v. Switzerland*, decision of 16 October 1986, DR49, p. 126.

168. Application No. 13252/87, *Gemeinde Rothenthurm v. Switzerland*, decision of 14 December 1988, DR59, p. 251.

169. Application No. 13253/87, *Ebner v. Switzerland*, decision of 6 June 1991.

170. Application No. 13920/88, *Nederlandse Omroepprogramma Stichting v. the Netherlands*, decision of 11 July 1991, DR71, p. 126.

171. Application No. 16956/90, *Dumarché v. France*, decision of 2 September 1992. See also No. 26335/95, *Vereniging Radio 100 and others v. Netherlands*, decision of 27 June 1996.



In January 1993 the Commission considered two applications concerning, respectively, a government's refusal and withdrawal of a broadcasting licence. The first dealt with refusal to issue a broadcasting licence on the ground that the legislation prevented individuals from obtaining such a licence.<sup>172</sup> The second concerned the withdrawal of broadcasting licences from non-profit associations on the ground that they intended to broadcast commercials.<sup>173</sup> Both applications were declared inadmissible.

In July 1993 the Commission declared inadmissible an application concerning a refusal to allocate frequencies for local television stations. The measure was found to be necessary in a democratic society for the prevention of disorder and for the protection of the rights of others. The Commission noted that the applicant broadcaster was in fact trying to obtain a network of local-broadcasting authorisations with a view to a nationwide operation.<sup>174</sup>

In October 1993 the Commission declared inadmissible an application concerning fines imposed for televising indirect commercial messages in television information programmes.<sup>175</sup>

In November 1993 and January 1994 the Commission declared inadmissible two cases in which broadcasting companies had been prohibited from transmitting their programmes via the Dutch cable network. It ruled that the prohibitions were prompted by a desire to maintain a pluralistic, non-commercial broadcasting system and protect diversity of expression of opinion in that system, and therefore pursued the legitimate aim of "protection of the rights of others". The applicant companies had not been allowed to broadcast their programmes via the cable network as they were not considered to be foreign broadcasting companies.<sup>176</sup>

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172. Application No. 17505/90, v. *Nydahl v. Sweden*, decision of 11 January 1993.

173. Application No. 18424/91, *Röda Korsets Ungdomsförbund and others v. Sweden*, decision of 15 January 1993.

174. Application No. 18353/91, *M.N. v. Spain*, decision of 6 July 1993. See also applications Nos.: 4750/71, *M. v. United Kingdom*, decision of 20 March 1972, Reports 40, p. 29; 8962/80, *X and Y v. Belgium*, decision of 13 May 1982, DR28, p. 112; 9720/82, *Barrou v. France*, decision of 7 May 1984.

175. Application No. 16844/90, *Nederlandse Omroepprogramma Stichting v. the Netherlands*, decision of 13 October 1993.

176. Application No. 18033/91, *Cable Music Europe Ltd v. Netherlands*, decision of 29 November 1993; application No. 21472/93, *X. SA v. Netherlands*, decision of 11 January 1994, DR76, p. 129.



In cases declared inadmissible in May 1994 the Commission acknowledged that a ban on televising live interviews or spoken statements by persons clearly expressing support for organisations linked with Sinn Fein constituted an interference with the rights of one applicant, a local councillor, under Article 10.<sup>177</sup> However, the restrictions did not affect the words spoken, only the form in which they were expressed. They were certainly inconvenient for journalists, but given the limited impact of the interference on the relevant applicants' exercise of their freedom of expression, the Commission found the impugned order to be proportionate to the aims pursued.

In January 1997 the Commission declared inadmissible an application concerning a television channel's conviction for broadcasting pictures of wall paintings in a theatre without paying royalties to the artist's estate.<sup>178</sup>

The Commission held that freedom to impart information and ideas, as included in the right to freedom of expression guaranteed by Article 10, could not be taken to include a general and unfettered right of any private citizen or organisation to broadcasting time on radio or television in order to express their views. It did state, however, that denying broadcasting time to one or more specific groups of people might, in particular circumstances, raise a problem under Article 10 (considered alone or in conjunction with Article 14 prohibiting discrimination).<sup>179</sup>

Such a problem might arise if, at election time for instance, one political party were refused broadcasting facilities while other parties were given broadcasting time.<sup>180</sup> Such broadcasting time could nevertheless be

177. Application No. 18714/91, *Brind and others v. the United Kingdom*, decision of 9 May 1994, DR77, p. 42; No. 18759/91, *McLaughlin v. the United Kingdom*, decision of 9 May 1994. In keeping with this previous decision, the Commission declared inadmissible an application concerning the exclusion order prohibiting the President of Sinn Fein from entering England following an invitation from a number of MPs and journalists: applications Nos. 28979/95 and 30343/96, *G. Adams and T. Benn v. the United Kingdom*, decision of 13 January 1997, DR88, p. 137.

178. Application No. 30262/96, *Société nationale de programmes France 2 v. France*, decision of 15 January 1997.

179. See in this connection Application No. 9297/81, *Association X. v. Sweden*, decision of 1 March 1982, DR 28, p. 204; similarly, No. 12439/ 86, *Sundberg v. Sweden*, decision of 15 October 1987; No. 23550/ 94, *Association mondiale pour l'Ecole Instrument de Paix v. Switzerland*, decision of 24 February 1995 and No. 25060/94, *J. Haider v. Austria*, decision of 18 October 1995, DR83, p. 66. See also application No. 28079/95, *L. De Angelis v. Italy*, decision of 17 January 1997.



subject to certain requirements laid down as part of the broadcasting company's editorial policy.<sup>181</sup>

In April 1997 the Commission declared inadmissible an application concerning a refusal to grant a licence to operate a television channel. The refusal was justified by the limited number of frequencies available, had been properly considered and was not irrevocable.<sup>182</sup>

The Commission has dealt with a number of applications concerning unauthorised private installation of receiving aerials.<sup>183</sup> The applications were declared inadmissible.

An important point is that freedom to receive information and ideas via radio and/or television does not of itself require the licensing referred to in Article 10 §1. The granting of licences concerns only programme transmission. The Commission would seem to have confirmed that implicitly in a case in which it stated that "the right to broadcast under Article 10 must be seen to include the right that the reception of the radio broadcasts is not interfered with".<sup>184</sup> The Commission again confirmed its position by holding that a refusal to grant a licence for receiving and retransmitting foreign commercial television programmes, pending a decision on the promotion of regional programmes by the regional public broadcasting body which enjoyed a preferential right of limited duration, was justified by the third sentence of Article 10 §1. The emphasis in the case in question was placed on retransmission, which was treated as a broadcasting activity subject to licensing.<sup>185</sup>

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180. Application No. 4515/70, *Sc. X. and the Association of Z. v. the United Kingdom*, decision of 12 July 1971, Yearbook 14, p. 538.

181. Application No. 24744/94, *R.J. Huggett v. the United Kingdom*, decision of 28 June 1995, DR82, p. 98.

182. Application No. 27388/95, *N. Grauso v. Poland*, decision of 9 April 1997.

183. In particular, Applications No. 10462/83, *B. v. the Federal Republic of Germany*, decision of 15 March 1984, DR37, p. 155; No. 10248/83, *Aebi v. Switzerland*, decision of 5 March 1985, DR41, p. 141; No. 17713/91, *Schindewolf v. the Federal Republic of Germany*, decision of 2 September 1992; No. 25183/94, *L. Schwartz v. Luxembourg*, decision of 12 April 1996 and No. 30401/96, *J. Van Der Auwera v. Belgium*, decision of 21 May 1997.

184. Application No. 10799/84, *Radio 24 AG, S., W. and A. v. Switzerland*, decision of 17 May 1984, DR37, p. 236.

185. Application No. 25987/94, *A.W. Hins and P.B. Hugenholtz v. the Netherlands*, decision of 7 March 1996, DR84, p. 135.



In a November 1999 decision the Court dismissed an application from the manager of a company which France's CSA broadcasting authority had refused an operating licence for a local television service. In keeping with its established case-law the Court pointed out that the margin of appreciation in licensing systems was not unlimited. That meant that refusal by a state to grant a broadcasting licence must not be clearly arbitrary or discriminatory. In this particular case, however, the refusal had been based on the presentation and content of the project concerned, which had not matched the licensing authority's views on local television, in particular with regard to the legal requirements. The Court also took into account a subsequent call for tenders for a local television service in the same region and the fact that the applicant had been awarded the operating licence. The approach here was seen as applying freedom to broadcast subject to a licensing system, a freedom guaranteed by the CSA. The Court concluded that the refusal had not been arbitrary and could be considered necessary in a democratic society for the defence of law and order and the protection of the rights of others.<sup>186</sup>

In July 2000 the Court ruled on an application concerning a refusal of the authorities to grant a shortwave radio broadcasting licence. The Court acknowledged that there was a legitimate interest in reserving shortwave radio for international broadcasting and protecting the reception quality of such broadcasts. Shortwave was not the frequency range preferred by most national commercial radio stations because of the frequent tuning needed to maintain proper reception. Further, private parties such as the applicant or firms could apply for other types of broadcasting licence (local, national, satellite). The applicant could also have used shortwave for United Kingdom reception had the transmitter been located in another country. The Court distinguished between this case and the *Informationsverein Lentia* case, where the state had had a monopoly on all broadcasting. Here the restrictions concerned the short-wave range only. The application was accordingly rejected on the ground that the interfer-

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186. *Lévêque v. France* (decision), No. 35591/97, 23 November 1999.



ence with freedom of expression was necessary in a democratic society to protect the rights of others.<sup>187</sup>

In an application examined in November 2000 a religious organisation complained that the authorities had refused it an application form for a broadcasting licence. The decision was based on a law prohibiting award of national broadcasting licences to religious organisations. The Court held that this was not an arbitrary restriction as it applied to all candidates who failed to meet the statutory requirements. There was also nothing to prevent the applicant from applying for a local broadcasting licence. The Court declared the application inadmissible.<sup>188</sup>

In March 2001 the Court ruled on an application concerning the allocation of limited air time on radio and television to a small political party during an election campaign. The Court reiterated the principle that “air time on radio and television ... is not unlimited and certain criteria have to be adopted to guarantee fair apportionment of the available time”. In this case the decision of the competent authorities had been based on “proportional equality and the possibility of broadcasting political programmes”. The apportionment of air time had therefore not been arbitrary, disproportionate or discriminatory. There had therefore been no violation of Article 10.<sup>189</sup>

In September 2001 the Court declared inadmissible an application concerning refusal of a broadcasting licence to a local radio station for young people. The Court pointed out that grant of a broadcasting licence could be made dependent on such criteria as the nature and objectives of a proposed station and the rights and needs of a specific audience (see the *Informationsverein Lentia and others* judgment on page 62). In this case the decision not to allocate the only available frequency to the applicants did not appear unreasonable as a number of radio stations for young people already operated in the area covered by the licence. The Court

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187. *Brook v. the United Kingdom* (decision), No. 38218/97, 11 July 2000.

188. *United Christian Broadcasters Ltd v. United Kingdom* (decision), No. 44802/98, 7 November 2000.

189. *Antonopoulos v. Greece* (decision), No. 58333/00, 29 March 2001.



held the interference with the applicants' freedom of expression to be necessary in a democratic society.<sup>190</sup>

In an application examined in May 2003 a broadcasting company complained of the Norwegian authorities' refusal to allow the recording and live radio broadcast of a very high-profile murder case. The Court held that the contracting states must be allowed wide discretion in regulating press freedom to transmit court hearings live. The Norwegian court's argument that such a broadcast would be prejudicial to proper administration of justice was reasonable. The Court also pointed out that the restriction applied to the media as a whole. Further, the hearings concerned charges of particularly heinous crimes committed in a family context and were held in open court. Special arrangements had been made to allow media coverage. The Court accordingly found no violation of Article 10.<sup>191</sup>

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190. *Skyradio AG and others v. Switzerland* (decision), No. 46841/99, 27 September 2001.

191. *P4 Radio Hele Norge ASA v. Norway* (decision), No. 76682/01, judgment of 6 May 2003, Reports 2003-VI.



## C. Access to information

### 1. Judgments of the Court

In the *Leander* case the applicant complained that the Swedish authorities had been keeping secret information on him which had not been disclosed to him on grounds of national security. In its judgment in March 1987 the Court concluded that there had been no violation of Article 10.<sup>192</sup>

In July 1989 it found no violation of Article 10 in the *Gaskin* case. The application challenged a local authority's refusal to disclose to the applicant a case record on him which had been kept when he was a minor in the authority's care.<sup>193</sup>

In February 1998 the Court concluded that Article 10 was not applicable in the case of *Guerra and others*. The applicants complained that the state had not informed the population of the risks run or of the measures to be taken in the event of an accident at a nearby chemical plant.<sup>194</sup>

The Court first recalled its case-law on restrictions on freedom of the press. It recognised the public's right to receive information and the right of access to information. The latter right had been recognised in the *Leander* case and "basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him".<sup>195</sup> The Court further stated:

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192. *Leander v. Sweden*, judgment of 26 March 1987, Series A No. 116.

193. *Gaskin v. the United Kingdom*, judgment of 7 July 1989, Series A No. 160.

194. *Guerra and others v. Italy*, judgment of 19 February 1998, Reports 1998-I.

195. *Leander v. Sweden*, judgment of 26 March 1987, Series A No. 116, p. 29, §74.



The facts of the present case are, however, clearly distinguishable from those of the aforementioned cases since the applicants complained of a failure in the system set up ... [to deal with] the major-accident hazards of certain industrial activities dangerous to the environment and the well-being of the local population. (§53)

In such circumstances, the freedom to receive information did not place positive obligations on the state to gather and disseminate information.

In the *Roche* case<sup>196</sup> the Court examined an application from a former serviceman who complained that he had inadequate access to information about his service medical records and to a series of tests in which he had participated. Drawing attention to its established case-law, the Court concluded that there had been no violation of Article 10.

## 2. Decisions of the Commission and the Court

As regards restrictions on access to information, in March 1987 the Commission examined two cases in which the applicants (a journalist, a production company, a journalists' union and a television channel) complained of restrictions imposed – under the 1981 British legislation on contempt of court – on their reporting of criminal proceedings. The Commission declared the applications inadmissible under Article 10.<sup>197</sup>

In the Commission's view, Article 10 §1 was concerned above all with access to general sources of information. Laying down certain conditions for granting a journalist accreditation with a court did not in itself constitute interference with the right to receive and impart information.<sup>198</sup>

Elaborating on the Court's case-law on access to information, the Commission stated in May 1996 that Article 10 did not guarantee individuals the right to be informed by public authorities about matters of public

196. *Roche v. the United Kingdom* [GC], No. 32555/96, judgment of 19 October 2005, Reports 2005-X.

197. Applications Nos. 11553/85 and 11658/85, *G.M.T. Hodgson, D. Woolf Productions Ltd and National Union of Journalists and Channel Four Television Co. Ltd v. the United Kingdom*, decision of 9 March 1987, DR 51, p. 136.

198. Applications Nos. 23868/94 and 23869/94, *A. Loersch and Nouvelle association du Courrier v. Switzerland*, decision of 24 February 1995, DR80, p. 162.



interest in a specific way (in this case, information on accession by Austria and Finland to the European Union).<sup>199</sup>

In April 1997 the Commission declared inadmissible an application concerning refusal to allow a company to consult court archives for the purpose of obtaining information about potential borrowers to sell to financial institutions. The Commission said:

Article 10 of the Convention does not give any person or firm ... the absolute right to access archives containing information on the financial situation of a third party, or require the authorities to communicate such information to anyone who so requests.<sup>200</sup>

In a broader context, numerous applications lodged with the Commission came from detainees on whom restrictions or prohibitions had been imposed, notably with regard to access to publications or the mass media. In most cases the Commission considered the restrictions to be inherent in lawful deprivation of liberty and therefore not at variance with the Convention.

In January 2002 the Court declared inadmissible two applications concerning refusal by the authorities to release to the applicants certain documents in their files in the context of proceedings on, respectively, their refugee-status and residence-permit applications. The purpose of the refusals was protection of national security, an area in which states enjoyed a wide margin of appreciation as to the methods they used. The Court concluded that the refusals were necessary in a democratic society.<sup>201</sup>

In a case determined in May 2004 the applicant asserted that Article 10 gave him a positive right of access to the records of his care placement as a child. Referring to the *Guerra* case, the Court held that Article 10 did not guarantee such a right. It declared the application inadmissible, rejecting the complaint as incompatible *ratione materiae*.<sup>202</sup>

199. Applications Nos. 26633/95, *E. Bader v. Austria*, decision of 15 May 1996; No. 27881/95, *E. Nurminen and others v. Finland*, decision of 26 February 1997.

200. Application No. 32849/96, *Grupo Interpres SA v. Spain*, decision of 7 April 1997, DR89, p. 150.

201. *Shamsa v. Poland* (decision), No. 40673/98, 10 January 2002 and *Shamsa v. Poland* (decision), No. 42649/98, 10 January 2002.



Delivering judgment in June 2004, the Court confirmed its case-law on access to information. In the case concerned it held that a state could not be put under a positive obligation to publish in the Official Gazette information classified as secret. The applicants' complaint was therefore inadmissible.<sup>203</sup>

In *Jones v. the United Kingdom*<sup>204</sup> the Court ruled inadmissible an application contesting a local cemetery authority's refusal to inform the public of its burial regulations, particularly the possibility of placing a photograph of the deceased on a grave. In keeping with its established case-law the Court held that Article 10 did not impose a positive obligation on the authorities to disseminate information. The application was ruled incompatible *ratione materiae* with the Convention.

In the *Segerstedt-Wiberg and others v. Sweden* case<sup>205</sup> the Court declared admissible an application about storage of personal information and refusal of access to all the Swedish secret police records concerning the applicants.

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202. *Eccleston v. the United Kingdom* (decision), No. 42841/02, 18 May 2004.

203. *Sîrbu and others v. Moldova*, Nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, judgment of 15 June 2004.

204. *Jones v. the United Kingdom* (decision), No. 42639/04, 13 September 2005.

205. *Segerstedt-Wiberg and others v. Sweden* (decision), No. 62332/00, 20 September 2005.



## D. Commercial statements

### 1. Judgments of the Court

In the *Markt Intern Verlag GmbH and Klaus Beermann* case the Court concluded that there had been no violation of Article 10. A German publishing firm and its editor-in-chief had invoked Article 10 in challenging a judgment of the Federal Court of Justice prohibiting them, under the Unfair Competition Act, from repeating certain statements published in a specialist information bulletin which criticised the practices of a mail-order firm. Noting that “information of a commercial nature cannot be excluded from the scope of Article 10, §1, which does not apply solely to certain types of information or ideas or forms of expression”<sup>206</sup>, the Court decided that the Federal Court of Justice’s prohibition order had not exceeded the margin of appreciation which national authorities were allowed in laying down, in accordance with Article 10, §2, formalities, conditions, restrictions or penalties on the exercise of freedom of expression.

In the *Casado Coca* case the Court reaffirmed the applicability of Article 10 in matters of advertising. A disciplinary penalty imposed on a lawyer for advertising his professional services had not violated Article 10. Restrictions on advertising must be closely scrutinised but the rules governing advertising by members of the Bar varied from one country to another. In most states parties there had been a tendency to relax the

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206. *Markt Intern Verlag GmbH and Klaus Beermann v. the Federal Republic of Germany*, judgment of 20 November 1989, Series A No. 165, §26.



rules as a result of societal changes, in particular the growing role of the media. The wide range of regulations and the different approaches adopted in the member states indicated the complexity of the issue. The Court held that the Bar authorities and the country's courts were in a better position than an international court to determine how, at a given time, the right balance could be struck between the requirements of proper administration of justice, the dignity of the profession, the right of everyone to receive information about legal assistance and allowing members of the Bar to advertise their practices. At the time (1982-83) the disciplinary measure could not be considered disproportionate.<sup>207</sup>

Application of Germany's unfair competition legislation was again examined by the Court in the *Jacobowski* case (cf. the above-mentioned *Markt Intern Verlag GmbH and Klaus Beermann* judgment). In its judgment, delivered in June 1994, the Court found that the injunction restraining the applicant journalist from disseminating a circular letter containing adverse comments on a German news agency had not violated Article 10. The circular letter had been mainly designed to draw that news agency's clients away to the new press agency which the applicant was planning to set up. The injunction went no further than to prohibit distribution of the circular, thus allowing the applicant to express himself by any other means. The German courts had therefore not overstepped their margin of appreciation.<sup>208</sup>

The *Stambuk* case, of October 2002, concerned a fine imposed on an ophthalmologist for disregarding a ban on advertising by co-authoring a newspaper article presenting his new laser operation technique. At the outset the Court emphasised that medical practitioners' duty of care in respect of people's health might account for restrictions on their conduct, including rules on their public communications or participation in public communications on professional issues. In relation to the press, however, these rules of conduct were to be balanced against the public's legitimate

207. *Casado Coca v. Spain*, judgment of 24 February 1994, Series A No. 285, §§35-37 and 51-57.

208. *Jacobowski v. Germany*, judgment of 23 June 1994, Series A No. 291-A, §§27-30.



interest in obtaining information. The duty of the press to impart information on matters of public interest should also be taken into consideration.

The offending article gave a balanced description of a new operating technique and necessarily included information about the risk involved and the success rate. The applicant's statements in this connection had not been incorrect or misleading as to the necessity or advisability of the operation. A photograph showing the applicant in professional context could not be regarded as amounting to prohibited or non-objective information or misleading advertising, being closely linked to the content of the article. Although the article might have had the effect of publicising the ophthalmologist and his technique, this was clearly secondary to the main content of the article (in this connection, see the *Barthold* judgment on page 11).

In the circumstances the domestic courts' strict interpretation of the ban on advertising in the medical profession had infringed the applicant's right to freedom of expression. The Court concluded that the interference had not been proportionate to the aims pursued, which were to protect health and protect the rights of others, and was therefore contrary to Article 10.<sup>209</sup>

In December 2003 the Court dealt with a case concerning an injunction prohibiting comparison of the sales prices of two newspapers unless other differences were indicated at the same time.<sup>210</sup> In view of states' margin of appreciation in purely commercial matters, including unfair competition and advertising, the Court's task was confined to ascertaining whether the particular measure was justifiable and proportionate. The prohibition had quite far-reaching implications: in any future advertising of that kind the applicant company would have to provide detailed information on the two newspapers' differences of style. The Court held that the prohibition was "too broad, impairing the very essence of price comparison". Moreover, putting it into practice – although not impossible

209. *Stambuk v. Germany*, No. 37928/97, judgment of 17 October 2002.

210. *Krone Verlag GmbH & Co. KG v. Austria (No. 3)*, No. 39069/97, judgment of 11 December 2003, Reports 2003-XII.



– was extremely difficult for the applicant company. The Court accordingly concluded that there had been a violation of Article 10.

## 2. Decisions of the Commission and the Court

In May 1979 the Commission stated that it did not consider commercial “speech” as such to be outside the scope of the protection afforded by Article 10 §1. However, “the level of protection must be less than that accorded to the expression of ‘political’ ideas, in the broadest sense, with which the values underpinning the concept of freedom of expression in the Convention [were] chiefly concerned”<sup>211</sup>.

On another occasion the Commission expressed more clearly the view that commercial speech was protected by the Convention, noting that it had “earlier expressed the opinion that commercial advertisements and promotional campaigns [were] as such protected by Article 10 §1”<sup>212</sup>.

In December 1987 it declared inadmissible an application concerning restrictions imposed by the French regulations governing advertising of medicines, even where the advertising was aimed at health service professionals.<sup>213</sup>

In March 1991 the Commission considered a case concerning a reprimand which a lawyer had received for prohibited advertising of his services. The case was declared inadmissible.<sup>214</sup>

In July 1991 it declared inadmissible a case involving a ban on a dance school’s using a misleading publicity slogan.<sup>215</sup>

In October 1993 it declared inadmissible an application concerning fines imposed on a broadcasting company for broadcasting indirect commercial utterances in the context of certain television programmes. In holding that the interference with the right protected by Article 10 did not go beyond the state’s margin of appreciation the Commission took into

211. Application No. 7805/77, *X and Church of Scientology v. Sweden*, decision of 5 May 1979, DR16, p. 68.

212. Application No. 9664/82, *Ingemar Liljenberg v. Sweden*, decision of 1 March 1983.

213. Application No. 10267/83, *Jean Alexandre and others v. France*, decision of 10 December 1987, DR54, p. 5.

214. Application No. 14622/89, *Hempfung v. Federal Republic of Germany*, decision of 7 March 1991, DR69, p. 272.

215. Application No. 17006/90, *K. v. Federal Republic of Germany*, decision of 2 July 1991.



account the target audience of the programmes (children), the applicant's position in the national broadcasting system and the amounts of the fines.<sup>216</sup>

In March 1999 the Court examined an application concerning a disciplinary penalty imposed on a lawyer for advertising his services. The Court reaffirmed that lawyers' special status gave them a central position in the administration of justice as intermediaries between the public and the courts, which justified the existence of a code of conduct which they could be required to obey. In keeping with its earlier case-law, the Court added that a country's bar authorities and domestic courts were in a better position than an international court to determine how, at a given time, the right balance could be struck between the various interests involved. In this case the Court ruled that the measures taken against the applicant had not been disproportionate and declared the application admissible.<sup>217</sup>

In March 2003 the Court declared inadmissible an application from the companies which owned and published a newspaper. They had been ordered to refrain from publishing certain material in an article criticising a competing newspaper and the latter's stance on a highly controversial exhibition on the war crimes committed by the Wehrmacht during the second world war. Firstly, the Court reaffirmed that the contracting states enjoyed a wide margin of appreciation whenever unfair competition was involved, as in the present case. The Court found that the article was part of a debate on a matter of public interest and contained elements of unfair competition. The national courts were justified in finding that, on account of the disparaging and untrue statements contained in the article, the elements of unfair competition outweighed the contribution to a debate of public interest. The order to refrain from repeating certain specific allegations, to which no financial penalty attached, was therefore an interference proportionate to the domestic courts' aim of protecting

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216. Application No. 16844/90, *Nederlandse Omroepprogramma Stichting v. the Netherlands*, decision of 13 October 1993.

217. *Lindner v. Germany* (decision), No. 32813/96, 9 March 1999.



the competing newspaper from unfair competition. Finally, the Austrian criminal courts' ruling, in parallel proceedings, that the article contained value judgments permissible in the context of a journalist's exercise of freedom of expression did not mean the civil courts' decision was arbitrary, because the requirements for establishing an offence in criminal and civil law were different. The civil courts, which had examined the case from the angle of unfair competition law, could not be blamed for coming to a different conclusion from the criminal courts. It was admittedly often difficult, as here, to distinguish between statement of fact and value judgment but as, under the Court's case-law, a value judgment also had to be adequately supported by facts, the difference between the two lay only in the degree of factual proof.<sup>218</sup>

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218. *Krone Verlag GmbH & Co. KG and Mediaprint Zeitungs-und Zeitschriftenverlag GmbH & Co. KG v. Austria* (decision), No. 42429/98, 20 March 2003.



## E. Protection of the general interest

### 1. Judgments of the Court

In the *Handyside* case the Court found that a ban imposed by the British authorities under the Obscene Publications Act on a book called *Little Red School Book* was in accordance with the exception laid down in Article 10, §2 regarding protection of morals. In that judgment – as with the subsequent *Sunday Times* judgment mentioned above – the Court emphasised the importance of freedom expression in a democratic society:

Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to §2 of Article 10, it 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 the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society.<sup>219</sup>

In the *Glaserapp* and *Kosiek* cases the Court dealt with two applications concerning the dismissal of two probationary civil servants on the ground of disloyalty to the German Basic Law.<sup>220</sup> The Court acknowledged that the respective applicants enjoyed the protection afforded by

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219. *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A No. 24, §49.

220. *Glaserapp v. the Federal Republic of Germany*, judgment of 28 September 1984, Series A No. 104 and *Kosiek v. the Federal Republic of Germany*, judgment of 28 September 1984, Series A No. 105. See also page 88.



Article 10, but found that the central issue in the cases was entry to the civil service, a right not recognised by the Convention. There had thus been no interference with exercise of the applicants' right to freedom of expression.

In the *Müller and others* case the Court decided that confiscation of paintings exhibited by an artist and fining him and other applicants for obscene publication constituted limitations on exercise of freedom of expression which were "necessary in a democratic society" and therefore did not contravene Article 10.

While specifying that freedom of expression included freedom of artistic expression, even when the manifestations of this freedom of expression "offend, shock or disturb", the Court held that, "in the circumstances" (there had been completely unrestricted access to the exhibition, with no admission charge or age-limit) and "having regard to the margin of appreciation" that might exist as to how morally offensive the paintings were, the authorities which had taken the confiscation decision and imposed the fine had been entitled to consider such measures necessary for the protection of morals. The confiscation measure in particular was not disproportionate since it was not absolute but merely of indeterminate duration, the owner of the paintings being able to apply to have the confiscation order lifted or varied if they no longer presented any danger or if other, more lenient measures were sufficient to protect public morals.<sup>221</sup>

In the *Open Door Counselling and Dublin Well Woman Centre* case the Court found that the restrictions placed on the applicant companies regarding the provision of practical information to pregnant women as to the possibility of having an abortion in the United Kingdom were in breach of Article 10. The companies complained *inter alia* that the restrictions were an unjustified interference with their right to impart information as guaranteed by Article 10. Although the restrictions were "prescribed by law" and pursued the legitimate aim of protection of

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221. *Müller and others v. Switzerland*, judgment of 24 May 1988, Series A No. 133.



morals, of which, in Ireland, protection of the right to life of the unborn was one aspect, the Court concluded that they were disproportionate<sup>222</sup>.

In the December 1992 *Hadjianastassiou* case, concerning the applicant's conviction of disclosing military secrets and the rejection of an appeal as unsubstantiated (although the applicant had not received the written reasons for his conviction within the 5-day limit for lodging an appeal), the Court decided there had been no violation of Article 10.<sup>223</sup>

In the *Chorherr* judgment of August 1993 the Court dealt with an application concerning the applicant's arrest, detention and conviction for breach of the peace after he had refused to stop distributing leaflets and exhibiting placards at a military parade. The Court held that the interference was "prescribed by law" and that there were legitimate grounds based on Article 10 §2 (prevention of disorder) for regarding the interference as "necessary in a democratic society".<sup>224</sup>

In a judgment delivered in September 1994 in the *Otto-Preminger-Institut* case the Court held that Austrian judicial decisions ordering the seizure and confiscation of the film *Das Liebeskonzil* by Werner Schroeter had not been in breach of Article 10. The measures were aimed at protecting the right of citizens not to have their religious beliefs insulted by public expression of others' opinions. Given the circumstances of the case and the broad margin of appreciation enjoyed by the Austrian authorities, neither the seizure nor the confiscation was disproportionate to the aim pursued.<sup>225</sup>

In April 1995 the Court found that Article 10 had been infringed in the *Piermont* case, which concerned the expulsion from French Polynesia of a German member of the European Parliament, together with a prohibition on his re-entry and a measure prohibiting him from entering New Caledonia. The Court ruled that "a fair balance was accordingly not struck between, on the one hand, the public interest requiring the prevention of

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222. *Open Door Counselling Ltd and Dublin Well Woman Centre Ltd v. Ireland*, judgment of 29 October 1992, Series A No. 246.

223. *Hadjianastassiou v. Greece*, judgment of 16 December 1992, Series A No. 252.

224. *Chorherr v. Austria*, judgment of 25 August 1993, Series A No. 266-B, §§30-34.

225. *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, Series A No. 295-A.



disorder and the upholding of territorial integrity and, on the other, [the applicant's] freedom of expression".<sup>226</sup>

The Court found a violation of Article 10 in the *Vogt* case, which concerned a teacher's dismissal from the public service because of her political activities in the German Communist Party (DKP). The Court saw a difference between this case and the *Glaserapp* and *Kosiek* cases and held that the dismissal constituted interference with the exercise of freedom of expression. Given the severity of the penalty and the applicant's conduct in her professional duties, the Court found that the dismissal had been disproportionate to the legitimate aim. Hence the interference could not be considered necessary in a democratic society.<sup>227</sup>

The Court has ruled on numerous cases concerning measures (convictions and seizures) taken by the Turkish authorities, under the criminal code or the Prevention of Terrorism Act, for dissemination of material (speeches, publications and leaflets) on state policies and actions and/or the problems in south-east Turkey.

The Court stated that "there is little scope under Article 10 §2 of the Convention for restrictions on political speech" and that the limits of permissible criticism were wider with regard to the government than in relation to a private citizen or even a politician. In the event, however, of incitement to violence and/or hatred, state authorities enjoyed a wider margin of appreciation when examining the need for interference.

In some cases the Court held that the offending statements did not incite violence or hatred, and that the interferences with freedom of expression were disproportionate to the aims pursued and in breach of Article 10.<sup>228</sup> In those cases where certain statements were tantamount to a call to violence it concluded that there had been no breach of Article 10 as the interference had answered a "pressing social need".<sup>229</sup>

Other cases were struck off the list following friendly settlements between the parties involved.<sup>230</sup>

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226. *Piermont v. France*, judgment of 27 April 1995, Series A No. 314, §77.

227. *Vogt v. Germany*, judgment of 26 September 1995, Series A No. 323.



The Court held that there had been a violation of Article 10 in the *Grigoriades* case, concerning a conscript's conviction of insulting the army in a letter he had written to his superior officers. The Court began by referring to certain principles enshrined in its case-law. In particular "Article 10 does not stop at the gates of army barracks"<sup>2231</sup> and legal rules designed to prevent the undermining of military discipline could not be used by national authorities "for the purpose of frustrating the expression of opinions, even if these are directed against the army as an institution". Although the contents of the letter included various strong and intemperate remarks concerning the armed forces, "those remarks were made in the context of a general and lengthy discourse critical of army life and the army as an institution". The letter was not directed specifically

228. In this regard, see the following judgments: *Incal v. Turkey*, of 9 June 1998, Reports 1998-IV; *Arslan v. Turkey* [GC], No. 23462/94, judgment of 8 July 1999; *Polat v. Turkey* [GC], No. 23500/94, judgment of 8 July 1999; *Gerger v. Turkey* [GC], No. 24919/94, judgment of 8 July 1999; *Karataş v. Turkey* [GC], No. 23168/94, judgment of 8 July 1999, Reports 1999-IV, (in this instance, the Court emphasised the artistic nature of the impugned text); *Başkaya and Okçuoğlu v. Turkey* [GC], Nos. 23536/94 and 24408/94, judgment of 8 July 1999, Reports 1999-IV; *Ibrahim Aksoy v. Turkey*, Nos. 28635/95, 30171/96 and 34535/97, judgment of 10 October 2000; *Emire Eren Keskin v. Turkey*, No. 49564/99, judgment of 22 November 2005; *Yamurdereli v. Turkey*, No. 29590/96 judgment of 4 June 2002; *Yaliçin Küçük v. Turkey*, No. 28493/95, judgment of 5 December 2002; *C.S.Y. v. Turkey*, No. 27214/95, judgment of 4 March 2003; *Gökçeli v. Turkey*, Nos. 27215/95 and 36194/97, judgment of 4 March 2003; *Karkın v. Turkey*, No. 43928/98, judgment of 23 September 2003; *Kızılyaprak v. Turkey*, No. 27528/95, judgment of 2 October 2003; *Abdullah Aydın v. Turkey*, No. 42435/98, judgment of 9 March 2004; *Mehdi Zana v. Turkey* (No. 2), No. 26982/95, judgment of 6 April 2004; *Yurttaş v. Turkey*, Nos. 25143/94 and 27098/95, judgment of 27 May 2004; *Zarakolu and Belge Uluslararası Yayıncılık v. Turkey*, Nos. 26971/95 and 37933/97, judgment of 13 July 2004; *Haydar Yıldırım and others v. Turkey*, No. 42920/98, judgment of 15 July 2004; *Kürkçü v. Turkey*, No. 43996/98, judgment of 27 July 2004; *Okutan v. Turkey*, No. 43995/98, judgment of 29 July 2004; *Feridun Yazar v. Turkey*, No. 42713/98, judgment of 23 September 2004; *Varlı and others v. Turkey*, No. 38586/97, judgment of 19 October 2004; *Doaner v. Turkey*, No. 49283/99, judgment of 21 October 2004; *Odaba v. Turkey*, No. 41618/98, judgment of 10 November 2004; *Ayhan v. Turkey* (No. 2), No. 49059/99, judgment of 10 November 2004; *Baran v. Turkey*, No. 48988/99, judgment of 10 November 2004; *Özkaya v. Turkey*, No. 42119/98, judgment of 30 November 2004; *Elden v. Turkey*, No. 40985/98, judgment of 9 December 2004; *Datekin v. Turkey*, No. 36215/97, judgment of 13 January 2005; *Erdost v. Turkey*, No. 50747/99, judgment of 8 February 2005; *Perinçek v. Turkey*, No. 46669/99, judgment of 21 June 2005; *Han v. Turkey*, No. 50997/99, judgment of 13 September 2005; *Veysel Turhan v. Turkey*, No. 53648/00, judgment of 20 September 2005; *Sevgi Yılmaz v. Turkey* (decision), No. 62230/00, 20 September 2005; *Osman Özçelik and others v. Turkey*, No. 55391/00, judgment of 20 October 2005; *Yüksel (Geyik) v. Turkey*, No. 56362/00, judgment of 25 October 2005; *Abdullah Aydın v. Turkey* (No. 2), No. 63739/00, judgment of 10 November 2005; *Fikret Sahin v. Turkey*, No. 42605/98, judgment of 6 December 2005.

229. In this regard, see *Zana v. Turkey*, judgment of 25 November 1997, Reports 1997-VII.

230. See judgments *Özler v. Turkey* (friendly settlement), No. 25753/94, judgment of 11 July 2002; *Mehmet Bayrak v. Turkey* (friendly settlement), No. 27307/95, judgment of 3 September 2002.

231. *Grigoriades v. Greece*, judgment of 25 November 1997, Reports 1997-VII, §45.



against either the recipients of the letter or any other person. Against such a background the interference with freedom of expression could not be justified as falling within the meaning of Article 10 §2.

In its judgment in *Ahmed and others* the Court ruled that the restrictions on the political activities of local government servants were not contrary to Article 10. They concerned the political activities of local government officers and applied legally under the 1989 Local Government and Housing Act.<sup>232</sup>

In the Court's opinion the government's adoption of the restrictions could be regarded as a way of meeting the requirement that civil servants should remain impartial, and it did not exceed the defendant state's margin of appreciation.

In the *Steel and others* case the Court found that the demonstrations which had led to the applicants' arrest should be viewed as an expression of their disagreement with certain activities. They therefore fell under Article 10. In assessing the need to restrict the applicants' freedom of expression, the Court examined the facts of the case and concluded that there had not been any violation of Article 10 in the case of the first two applicants. Physical obstruction of legal activities – a grouse shoot and construction of a motorway – could justify the applicants' being removed and detained. However, the authorities' detention of the other three applicants following a completely peaceful demonstration at a conference concerning a combat helicopter had been illegal and disproportionate and therefore contrary to Article 10.<sup>233</sup>

In May 1999, in the *Rekvényi* case, the Court examined a rule that career members of the police and the armed forces could not join political parties or engage in political activities. The Court found that the restrictions, designed to ensure the political neutrality of the police, pursued legitimate aims, namely protection of national security and public safety. It did not consider them disproportionate to the aims pursued, as members of the police still had the right to express their political opinions and

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232. *Ahmed and others v. United Kingdom*, judgment of 2 September 1998, Reports 1998-VI.

233. *Steel and others v. United Kingdom*, judgment of 23 September 1998, Reports 1998-VII.



preferences in other ways. For example, they could expound election programmes, organise election campaign meetings, vote in and stand for elections to Parliament and also join trade unions. In the circumstances the restrictions did not appear excessive and therefore did not violate Article 10 of the Convention.<sup>234</sup>

In October 1999, in the *Wille* case, the Court found that the Prince of Liechtenstein's decision not to appoint the applicant to public office after statements he had made was in breach of Article 10. The applicant had expressed his views on a matter of interpretation of the Constitution in a lecture he had given.

First the Court decided that there had been interference with the applicant's freedom of expression. The Prince's decision not to consider him for any further public post constituted:

a reprimand for the previous exercise by the applicant of his right to freedom of expression and, moreover, had a chilling effect on the exercise by the applicant of his freedom of expression, as it was likely to discourage him from making statements of that kind in the future.<sup>235</sup>

The Court then considered whether the decision had been necessary in a democratic society. It noted that public officials serving in the judiciary (the applicant was a high-ranking judge at the time) could be expected to show restraint in exercising their freedom of expression whenever the judiciary's authority and impartiality might be called in question. However, the fact that the applicant's lecture had political implications should not have prevented him from expressing his views. The opinion which the applicant had expressed could not be regarded as an untenable proposition since it was shared by a large number of people. The applicant had not commented on pending cases, severely criticised persons or public institutions or insulted senior officials or the Prince. Nor was there any evidence that the views he had expressed in his lecture had in any way affected his performance of his duties or any pending or imminent case. Nor had it been established that the applicant had acted repre-

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234. *Rekvényi v. Hungary* [GC], No. 25390/94, judgment of 20 May 1999, Reports 1999-III.

235. *Wille v. Liechtenstein* [GC], No. 28396/95, judgment of 28 October 1999, Reports 1999-VII, §50.



hensibly in or outside the sphere of his judicial duties. The Court therefore found that the interference had not been necessary in a democratic society.

In May 2001 it ruled on the *Cyprus v. Turkey* case. The applicant government complained of a vetting procedure for school textbooks and of restrictions on the circulation of Greek-language newspapers, alleging also that the competent authorities refused to protect the Turkish Cypriot political opposition's right to freedom of expression.

With regard to the first allegation the Court decided that the Turkish Cypriot authorities' vetting of the content of school textbooks before they were issued was at variance with Article 10. According to the respondent government the purpose of the vetting procedure was to identify any threats to inter-community relations. However, the Court took the view that the authorities had in fact unilaterally censored or banned a large number of textbooks whose content was quite harmless. This censorship was therefore a denial of the right to freedom of information.

In respect of the other two allegations, however, the Court found that no violation of the rights guaranteed under Article 10 had been established.<sup>236</sup>

In July 2001 the Court concluded that Article 10 had been violated in the *Ekin Association* case concerning a ministerial decision banning the circulation in France of a book on various aspects of Basque culture and distinctiveness. The measure was taken under a statutory provision allowing the Minister of the Interior to ban any publication in a foreign language or of foreign provenance.

The Court held that such prior restrictions were not incompatible with the Convention, but "should be part of a legal framework which places very strict limits on the use of such bans and provides for effective judicial remedy against any abuses".<sup>237</sup> The ban on the book did not meet these two requirements, and nor did the book's content justify such a serious violation of the applicant's freedom of expression, in particular from the

236. *Cyprus v. Turkey* [GC], No. 25781/94, judgment of 10 May 2001, Reports 2001-IV.

237. *Ekin Association v. France*, No. 39288/98, judgment of 17 July 2001, Reports 2001-VIII, §58.



standpoint of national security and public order. The interference was therefore not “necessary in a democratic society”.

In July 2003 the Court ruled that a ban on broadcasting a religious advertisement on radio could be justified in the light of Article 10.<sup>238</sup> Article 10 did not, as such, provide that an individual was to be protected from views that do not accord with his or her own but remarks which were not, on the face of it, offensive might become so in certain circumstances. As the prohibition related only to one type of media, the applicant’s freedom of expression was not totally restricted. In addition, lifting or relaxing the restriction was difficult to envisage. Given the margin of appreciation enjoyed by the respondent state in this area, the Court concluded that there were relevant and sufficient reasons justifying the impugned interference.

The Court concluded that there had been a violation of Article 10 in a case in which the leader of a sect had been convicted of inciting the people to hatred and hostility on the basis of a distinction founded on religious affiliation. The statements at issue had been made during a television programme.<sup>239</sup> Firstly, the Court observed that the topic of the programme had been whether the applicant’s conception of Islam was incompatible with democratic values. The question was widely debated in the Turkish media and was of general interest. Certain statements on which the conviction had been based demonstrated an intransigent attitude towards and profound dissatisfaction with contemporary institutions in Turkey. In the Court’s view the mere fact of defending sharia, without calling for violence to establish it, could not be regarded as “hate speech”. Given the context of the case, the need for the restriction had not been established convincingly.

In the *Sidabras and Dziautas v. Lithuania* case (judgment delivered July 2004) the Court ruled that the dismissal of two former KGB officers from the civil service and a refusal to recruit them did not constitute an interference with exercise of their freedom of expression.<sup>240</sup> In this case, unlike the

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238. *Murphy v. Ireland*, No. 44179/98, judgment of 10 July 2003, Reports 2003-IX (see also p. 66).

239. *Gündüz v. Turkey*, No. 59745/00, judgment of 3 December 2003, Reports 2003-XI.



*Glasenapp, Kosiek* and *Vogt* cases, the refusal to recruit the applicants, as a sports instructor and a lawyer respectively, did not “amount to a restriction on their ability to express their views or opinions” (§70). There had therefore been no breach of Article 10.

In October 2004 the Court ruled that an applicant’s conviction for belonging to an illegal organisation did not infringe Article 10.<sup>241</sup> In the Court’s view his conviction had been based on several pieces of evidence, including the fact that he was the owner of a magazine and a publishing company serving the cause of an illegal army organisation (§34). The conviction was therefore not an interference with the exercise of his freedom of expression.

The Court concluded that there had been a violation of Article 10 in the *Alinak* case, concerning the seizure of a book describing acts of torture committed by the security forces against the population of a village in south-east Turkey. Firstly the Court observed that the book was a novel inspired by real events. Although commenting subjectively on certain events, the book nowhere gave the real name of the officer criticised in a particular passage. Taken literally, certain passages of the book might be construed as inciting readers to hatred, revolt and the use of violence, but it had to be borne in mind that the author had chosen to express himself in the form of a novel. That form of artistic expression was aimed at a much smaller audience than the media commanded, which limited its impact on public order. The artistic nature and limited impact of the book made it an expression of deep distress at tragic events rather than a call to violence.<sup>242</sup>

In the *Salov* case the Court examined an application concerning a partially suspended prison sentence and fine imposed on the applicant for distributing eight copies of a false newspaper announcing the death of President Kuchma in the middle of the presidential election campaign.

240. *Sidabras and Dziautas v. Lithuania*, Nos. 55480/00 and 59330/00, judgment of 27 July 2004, Reports 2004-VIII. See also *Rainys and Gasparavius v. Lithuania*, Nos. 70665/01 and 74345/01, judgment of 7 April 2005.

241. *Rıza Dinç v. Turkey*, No. 42437/98, judgment of 28 October 2004.

242. *Alinak v. Turkey*, No. 40287/98, judgment of 29 March 2005.



The Court agreed with the government that the copies of the newspaper contained a “false statement of fact”. However, the applicant had neither produced nor published the statement. He doubted its authenticity and had been trying to verify it. As Article 10 did not prohibit discussion or dissemination of information received even if it was strongly suspected that the information might not be truthful,<sup>243</sup> that the impugned interference was disproportionate to the aim pursued, particularly given the limited impact of distributing the eight copies and the severity of the penalties imposed on the applicant. In the Court’s view the domestic courts had not taken sufficient account of the role played by protection of freedom of expression during a presidential election campaign. The Court accordingly concluded that there had been a violation of Article 10.

In the *I.A.* case the applicant, who owned a publishing house, had been fined for offending and insulting religious feelings by publishing a novel that criticised religion in general and Islam in particular. The Court pointed out that the case had to do not only with comments that offended or shocked the reader and with “provocative” opinions but also with “an abusive attack on the Prophet of Islam”.<sup>244</sup> On account of the passages in question “believers [might] legitimately feel themselves to be the object of unwarranted and offensive attacks”.<sup>245</sup> Given the margin of appreciation which countries were allowed in the matter of attacks on religious beliefs, the respondent state had not breached Article 10.

## 2. Decisions and reports of the Commission and the Court

In September 1989 the Commission declared inadmissible an application concerning the dismissal of a doctor employed in a Catholic hospital on account of statements he had made regarding abortion. The applicant claimed that there had been an infringement of his freedom of expression as guaranteed by Article 10.<sup>246</sup>

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243. *Salov v. Ukraine*, No. 65518/01, judgment of 6 September 2005, Reports 2005-VIII, §113.

244. *I.A. v. Turkey*, No. 42571/98, §29, judgment of 13 September 2005, Reports 2005-VIII.

245. *Ibid.*

246. Application No. 12242/86, *Rommelfanger v. the Federal Republic of Germany*, decision of 6 September 1989, DR62, p. 151.



In April 1991 the Commission considered a case in which the applicants had been convicted of renting or selling obscene videos. The Commission held that the interference was justified for the protection of morals and necessary in a democratic society.<sup>247</sup>

In October 1992 it found that restrictions on a doctor with regard to advertising his private medical practice in the press did not contravene Article 10 and were not disproportionate to the legitimate aim of protecting patients' health and also the rights of others, namely other doctors.<sup>248</sup>

In April 1995 the Commission unanimously found a violation of Article 10 in a case in which a political leader of the Muslim minority of western Thrace had been convicted of infringing public order by handing out, during an election campaign, leaflets describing the Muslim population of the region as Turkish. The Commission noted the importance of freedom of expression for representatives of the people and concluded that the interference was neither proportionate to the aim pursued nor justifiable under Article 10 §2.<sup>249</sup>

The Court has ruled on the admissibility of a number of applications concerning measures (convictions and seizures) taken by the Turkish authorities under the criminal code or the Prevention of Terrorism Act following the dissemination of material (speeches, publications or statements) on state policies and actions and/or the problems in south-east Turkey.

Some applications were declared admissible.<sup>250</sup> In other cases, however, the Court found that remarks had been made which incited violence

247. Application No. 16564/90, *W. and K. v. Switzerland*, decision of 8 April 1991.

248. Application No. 16632/90, *R. Colman v. the United Kingdom*, report of 19 October 1992, Series A No. 258-D, p. 112, followed by the friendly settlement before the Court, judgment of 28 June 1993, Series A No. 258-D.

249. Application No. 18877/91, *S. Ahmet v. Greece*, report of 4 April 1995. The Court did not pronounce judgment on the merits, considering that the applicant had not exhausted domestic remedies. See the *Ahmet Sadik* judgment of 15 November 1996, Reports 1996-V.

250. In this regard, see applications Nos. 25658/94, *S. Aslantaş v. Turkey*, report of 1 March 1999, Committee of Ministers, Interim resolution DH (99) 560 of 8 October 1999; *Yeilgöz and Firik v. Turkey* (decision), Nos. 58459/00 and 62224/00, 17 June 2004; *Yalçın Küçük v. Turkey* (No. 2) (decision), No. 56004/00, 21 October 2004; *Tüzel v. Turkey* (decision), No. 57225/00, 10 May 2005; *Calistar v. Turkey* (decision), No. 60261/00, 10 May 2005; *Imrek v. Turkey* (decision), No. 57175/00, 23 June 2005.



and/or hatred and concluded that the measures imposed on the applicants were proportionate to the aims pursued and necessary in a democratic society. All of these cases were ruled inadmissible<sup>251</sup>.

In June 1999 the Court examined an application concerning a refusal to allow a member of parliament to sit in the House of Commons and avail himself of certain privileges on the ground that he had refused to take an oath of allegiance to the British Crown. The Court first decided that the requirement to take the oath pursued a legitimate aim as it represented a statement of loyalty to the constitutional principles of the respondent state. Secondly, the measures taken had not been disproportionate as the oath was a reasonable requirement in relation to the country's constitutional system. In addition, there was nothing to prevent the applicant from expressing his views in another context. The application was therefore declared inadmissible.<sup>252</sup>

In January 2000 the Court declared inadmissible an application concerning an appeal court's refusal to allow a former terrorist to be interviewed by journalists before the end of her trial. The statements made by the applicant during her trial had been ambiguous. While criticising the past activities of the organisation of which she was a member, she had clearly admitted her belief in its ideology. These statements were not in themselves an incitement to terrorism, but in the light of the applicant's personal background they could be interpreted by sympathisers as an appeal to continue the terrorist fight. The Court concluded that the restrictions were a reasonable response to a pressing social need and were proportionate to the aims pursued.<sup>253</sup>

In April 2000 the Court examined an application from a teacher who had been arrested as he prepared to give a press conference. It noted that although the arrest had prevented him from giving a press conference, that had not contravened his right to freedom of expression, especially as the purpose of the arrest had not been to prevent him from speaking to

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251. In this regard, see *Zana v. Turkey* (decision), No. 29851/96, 19 September 2000.

252. *McGuinness v. the United Kingdom* (decision), No. 39511/98, 8 June 1999, Reports 1999-V.

253. *Hogefeld v. Germany* (decision), No. 35402/97, 20 January 2000.



the press. Assuming that his being prevented from giving a press conference constituted an interference with his freedom of expression, the interference was the direct consequence of a legal arrest ordered in connection with criminal proceedings and necessary to the investigation. As such it was justified under Article 10, §2. The application was dismissed.<sup>254</sup>

In May 2000 the Court ruled on the admissibility of a case concerning the applicants' conviction for disturbing a lawful whaling expedition by placing themselves between the whale and the whaling ship. The Court noted that the applicants' purpose had not been simply to express their disagreement with whaling but actually physically to put a stop to it. This was tantamount to coercion preventing the fishermen from doing their job. In the Court's view the interference here had to do with behaviour which was not entitled to the same protection as expression of political opinions, discussion of questions of general interest or peaceful demonstration of opinions on such issues. On the contrary, the contracting parties must enjoy wide discretion to evaluate the need for measures restricting this type of behaviour. The purpose of the conviction had been to ensure that lawful exploitation of live resources within the respondent state's exclusive economic zone was given effective legal protection. The application was thus inadmissible.<sup>255</sup>

The Court declared inadmissible a case concerning the conviction of an author of a book about growing and producing cannabis. The decision to retain an offence of incitement to produce cannabis and to penalise authors of publications which had that purpose must be considered to fall within states' margin of appreciation. The Court found that the interference with the applicant's right to freedom of expression was justified by relevant and sufficient reasons and responded to a pressing social need.<sup>256</sup>

In January 2001 the Court ruled on an application concerning the arrest, detention and incarceration of two demonstrators for disrupting an

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254. *Debbasch v. France* (decision), No. 49392/99, 27 April 2000.

255. *Drieman and others v. Norway* (decision), No. 33678/96, 4 May 2000.

256. *Marlow v. the United Kingdom* (decision), No. 42015/98, 5 December 2000.



angling competition and thereby disturbing the peace. The impugned measures were proportionate in view of the risk of disorder the applicants had created by persistently disrupting a lawful activity. The application was declared inadmissible.<sup>257</sup>

In a decision of January 2001 the Court ruled on a case in which an asylum-seeker who had published documents containing political propaganda had had his means of communication confiscated. The confiscation had sought to prevent him from pursuing political propaganda activities at the international level. The Court also took the applicant's personal history into account in deciding that the impugned interference was "necessary in a democratic society". The application was declared inadmissible.<sup>258</sup>

In April 2001 the Court declared inadmissible an application concerning the confiscation and destruction of propaganda material consisting in PKK books and magazines. Their quantity suggested that these had been meant not for personal use but for sale or distribution in Switzerland. They encouraged violence and sought to spread the tensions existing in Turkey to Switzerland. The Court found that the interference was necessary in a democratic society, in the interests of national security and crime prevention.<sup>259</sup>

In July 2001 the Court decided that an applicant's arrest and detention after her refusal to heed police warnings during a demonstration were measures proportionate to the legitimate aims pursued. The application was declared inadmissible.<sup>260</sup>

In a case examined in November 2001 a modern-history teacher alleged that he had been dismissed as professionally unqualified because of the content of two theses he had written in the German Democratic Republic (GDR). The Court noted that in the days of the GDR it had been impossible for him to publish works that diverged from the official political line. In the Court's view, however, in verifying his professional qualifications it was legitimate for the competent authorities to take into

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257. *Nicol and Selvanayagam v. the United Kingdom* (decision), No. 32213/96, 11 January 2001.

258. *Zaoui v. Switzerland* (decision), No. 41615/98, 18 January 2001.

259. *Kaptan v. Switzerland* (decision), No. 55641/00, 12 April 2001.

260. *McBride v. the United Kingdom* (decision), No. 27786/95, 5 July 2001.



account his earlier works as a historian. Further, the domestic courts had based their findings not only on the two theses but also on the absence of any subsequent academic publications, even after the reunification of Germany, that might have made up for the applicant's shortcomings. The interference was therefore not disproportionate to the legitimate aim pursued. The Court declared the application inadmissible.<sup>261</sup>

In November 2001 the Court ruled on a case concerning a teacher's dismissal from the public education system for bringing political pressure to bear on a pupil in the German Democratic Republic (GDR). In reaching their decision, in addition to the applicant's duties within the unified socialist party (SED), the authorities had taken into account that he had used a pupil to observe political opponents. The Court approved the domestic courts findings' that the applicant's attitude towards his pupils was incompatible with his duties as a teacher. The impugned measure was therefore not disproportionate to the aim pursued. The application was declared inadmissible.<sup>262</sup>

In March 2003 the Court declared inadmissible an application concerning a conviction for breach of the peace in connection with a demonstration that had blocked a public road. It found that, given the danger to public order posed by the applicant's conduct and the smallness of the fine imposed, the conviction was justified by the need to maintain public order and was not disproportionate to the legitimate aim which the authorities had pursued.<sup>263</sup>

In May 2003 the Court examined an application from an army officer who had criticised in various media the fact that several members of the intelligence services had had their employment terminated, referring in particular to a "purge". The Court found that the disciplinary penalties which the Ministry of Defence had imposed on him were not a disproportionate infringement of his freedom of expression since his statements could not be justified by the need to uphold his dignity and honour. As a

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261. *Petersen v. Germany* (decision), No. 39793/98, 22 November 2001, Reports 2001-XII.

262. *Volkmer v. Germany* (decision), No. 39799/98, 22 November 2001.

263. *Lucas v. the United Kingdom* (decision), No. 39013/02, 18 March 2003.



military officer working for the intelligence services he ought to have been more restrained in his use of language. The application was declared inadmissible.<sup>264</sup>

In July 2003 the Court declared inadmissible an application from a Turkish national convicted of having – with a number of others – set up an illegal organisation aimed at undermining the territorial unity of the state by illegal means. The applicant argued that his conviction had infringed his right to freedom of expression since he had been convicted merely on account of having distributed leaflets aimed at promoting the opinions of a political group. However, the Court found that the applicant's conviction was based solely on his membership of an illegal organisation. As the leaflets had been used by the national courts only as proof of his involvement in the organisation, his conviction could not be considered to be an interference with his right to freedom of expression.<sup>265</sup>

In September 2003 the Court ruled on an application from a member of parliament whose claim for financial compensation from another member who had violently interrupted a speech he had made during a parliamentary session had been dismissed. The applicant alleged that the national authorities had dismissed his claim on account of the supposedly separatist content of his speech and that they had thereby failed in their positive obligation to protect his right to freedom of expression. The Court disagreed: he had been allowed to express his views before Parliament and had been interrupted by the other member only after exceeding his allotted speaking time, in which connection no action whatsoever had been taken. The application was declared inadmissible.<sup>266</sup>

In June 2004 the Court dealt with a case concerning steps that had been taken to dismiss the applicant as President of the Supreme Court. The applicant alleged, that although he had ultimately not been dismissed, the move to dismiss him had been made on account of views he

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264. *Camacho López Escobar v. Spain* (decision), No. 62550/00, 20 May 2003.

265. *Kiliç v. Turkey* (decision), No. 40498/98, 8 July 2003. See also the application of this decision in the following cases: *Aksaç v. Turkey* (decision), No. 41956/98, 15 January 2004; *Kilinç v. Turkey* (decision), No. 48083/99, 27 April 2004.

266. *Alinak v. Turkey* (decision), No. 39930/98, 2 September 2003.



had expressed. The Court held, however, that the steps taken had related to “the applicant’s ability properly to exercise the post of President of the Supreme Court ... [and] therefore lay ... within the sphere of holding a public post”, a right not secured in the Convention. It accordingly concluded that there had been no interference with exercise of the applicant’s freedom of expression and declared the application inadmissible.<sup>267</sup>

In May 2005 the Court examined an application from a student who had been refused entry to a university campus because he wore a beard. Even assuming that the right to freedom of expression included the right to express ideas by wearing a beard, the Court found that it had not been shown that the prohibition complained of had prevented the applicant from expressing a particular opinion. It therefore ruled the application inadmissible.<sup>268</sup>

In August 2005 it declared admissible an application concerning a fine on the applicant for organising a gathering that had been prohibited.<sup>269</sup>

The Court declared an application inadmissible in a September 2005 decision concerning a case in which, following a speech, a former minister and member of parliament had been sentenced to one year’s imprisonment and a fine.<sup>270</sup> The speech had criticised measures taken by the government to deal with the resurgence of fundamentalist movements, and had referred to sharia and jihad in a satirical, provocative tone. The speech had not openly called for the use of violence but had expressed support for terrorist groups of an Islamist persuasion which resorted to jihad. It had thereby stirred up hatred and incited violence. In view of the danger to civil peace and the democratic system, the Court ruled that, despite the reduced margin of appreciation in the case, the disputed interference answered a “pressing social need”. The applicant had also been released on parole, which helped to make the penalty proportionate to the aim pursued.

267. *Harabin v. Slovakia* (decision), No. 62584/00, 29 June 2004, Reports 2004-VI.

268. *Tig v. Turkey* (decision), No. 8165/03, 24 May 2005.

269. *Štefanec v. the Czech Republic* (decision), No. 75615/01, 25 August 2005.

270. *Güzel v. Turkey (No. 1)* (decision), No. 54479/00, 20 September 2005.



In an October 2005 decision<sup>271</sup> the Court declared admissible an application concerning a ban on a political party's distributing or putting up a poster about May Day demonstrations which was deemed likely to disturb public order.

In the *Perrin* case<sup>272</sup> the Court declared inadmissible an application from a United Kingdom resident who had received a prison sentence for disseminating pornographic material on a free Internet site based in the United States. Given the worldwide nature of the Internet, the applicant alleged that his conviction was not "prescribed by law" since an operator could not foresee the requirements for disseminating information in every national legal system. The Court held that, irrespective of whether it was legal to disseminate the images in other countries, the law that had been applied in the United Kingdom could be considered to constitute a legal basis for the interference within the meaning of the Convention. With regard to the need for the interference, it ruled that the prohibition and penalty complained of fell within the discretion which states enjoyed in this area. The Court ruled out the possibility of applying here its decision in the *Observer and Guardian* case: unlike the publication of information which was no longer confidential as a result of previous, initial publication, the mere fact that material of the same kind was accessible on other sites did not permit the applicant to allow anyone and everyone, including minors, free access to the content of his site. It was up to the applicant to restrict access to the material.

In the *Blake v. the United Kingdom* case<sup>273</sup> the Court declared inadmissible an application from a former member of the British Secret Intelligence Service who disputed that an order that the copyright in his autobiography, in which he revealed confidential information, be transferred to the Crown on account of his undertaking to the British authorities was in accordance with Article 10 of the Convention. The Court ruled that such an interference was not disproportionate to the aims pursued

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271. *Abdullah Levent Tüzel v. Turkey* (decision), No. 71459/01, 4 October 2005.

272. *Perrin v. the United Kingdom* (decision), No. 5446/03, 18 October 2005.

273. *Blake v. the United Kingdom* (decision), No. 68890/01, 25 October 2005.



since that the book had been published and distributed without any restriction and it was necessary to prevent other secret agents breaking their duty of confidentiality.

In a decision handed down in November 2005<sup>274</sup> the Court declared admissible an application from the owner of a publishing company who contested an administrative penalty for incitement to ethnic hostility, the penalty taking the form of a warning and confiscation of all copies of a racist calendar designating territories belonging to neighbouring countries as “ethnic Lithuanian lands under temporary occupation”.

In the *Otto v. Germany* case<sup>275</sup> the Court examined an application from a police inspector disputing a refusal to promote him on account of his political activities. Firstly the Court pointed out that although the right of recruitment to the civil service had deliberately been omitted from the Convention, that did not mean a person could not complain of not being promoted if the refusal violated one of the rights guaranteed by the Convention. In the present case, however, the restriction on the applicant’s freedom of expression was proportionate to the aim pursued. The application was declared inadmissible.

In the *Puzinas v. Lithuania* case<sup>276</sup> the Court ruled admissible an application from a prisoner who complained of his correspondence being censored and certain restrictions being imposed after a letter he had written concerning his conditions of imprisonment.

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274. *Balsytė-Lideikienė v. Lithuania* (decision), No. 72596/01, 24 November 2005.

275. *Otto v. Germany* (decision), No. 27574/02, 24 November 2005.

276. *Puzinas v. Lithuania* (decision), No. 63767/00, 13 December 2005.



## F. Protection of other individual rights

### 1. Judgments of the Court

In the *Wingrove* case the Court held that the British Board of Film Classification's refusal, on the ground of blasphemy, to grant a classification certificate to the video *Visions of Ecstasy*, written and produced by the applicant, was not contrary to Article 10. In such cases, it said, the national authorities were in principle in a better position than the international judge to give an opinion on the exact content of the requirements regarding protection of the rights of others.<sup>277</sup>

In the *Bowman* case the Court held that proceedings brought for breach of the Representation of the People Act – in the period before an election the applicant had distributed leaflets setting out each candidate's views on abortions and experiments carried out on embryos – were a violation of Article 10. The provision at issue did not directly restrain freedom of expression but did result in a limitation of it. Where elections were concerned, Article 10 must be interpreted in the light of the rights protected by Article 3 of Protocol No. 1 to the Convention,<sup>278</sup> as in the Court's opinion "the two rights [were] inter-related".<sup>279</sup> With regard to the facts of the case, the domestic legal provision "operated, for all practical purposes, as a total

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277. *Wingrove v. the United Kingdom*, judgment of 25 November 1996, Reports 1996-V, §§58.

278. Article 3 of Protocol No. 1 provides that "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".

279. *Bowman v. the United Kingdom*, judgment of 19 February 1998, Reports 1998-I, §42.



barrier” to the publication of certain information calculated to further the applicant’s aims (§47). In the Court’s opinion:

individual freedom of expression, as a key ingredient of a democratic society, must be considered inextricably linked with a free election system and cannot be excluded without convincing justification.

In the *Janowski* case, determined in January 1999, the Court held that the applicant’s criminal conviction for insulting two municipal guards did not breach Article 10. The Court ruled that “civil servants must enjoy public confidence in conditions free of undue perturbation if they [were] to be successful in performing their tasks.”<sup>280</sup> Although less closely scrutinised than that of politicians, the reputation of civil servants was protected against injurious or insulting verbal attacks which exceeded the limits of acceptable criticism.

In November 1999 the Court found that there had been a breach of Article 10 in the *Nilsen and Johnsen* case. The two applicants (representatives of Norwegian police trade union organisations) had been convicted of defamation as a result of statements they had made in response to various books written by a professor concerning police brutality in Bergen. The Court took the view that one of the applicants’ allegations could be regarded as an allegation of fact susceptible of proof but for which there was no factual basis and which was unwarranted by the way in which the professor had expressed himself in his books. Declaring that allegation null and void was therefore not in breach of Article 10 of the Convention. The other statements, however, imputing improper motives or intentions to the professor, were considered, in view of their wording and context, to be value judgments. The Court noted that at the relevant time there had been certain objective factors supporting the applicants’ questioning of the professor’s investigations. The Court also acknowledged the applicants’ right to “hit back in the same way”<sup>281</sup> at the extremely harsh criticism of the police. The statements had been made in the context of

280. *Janowski v. Poland* [GC], No. 25716/94, judgment of 21 January 1999, Reports 1999-I, §33.

281. *Nilsen and Johnsen v. Norway* [GC], No. 23118/93, judgment of 25 November 1999, Reports 1999-VIII, §52.



heated and continuing public debate of affairs of general concern, and professional reputations had been at stake on both sides. Consequently a degree of exaggeration should be tolerated. The applicants' conviction was accordingly disproportionate to the legitimate aim pursued.

The Court found that there had been a violation of Article 10 in the *Fuentes Bobo* case, which concerned a programme director's dismissal for making offensive remarks about the managers of a Spanish public television channel during an interview. The Court pointed out that Article 10 applied to all employer-employee relationships, even those falling within the realm of private law, and that in certain cases there was a positive obligation on the state to protect the right to freedom of expression.

The Court also emphasised that "Article 10 of the Convention [did] not guarantee unrestricted freedom of expression, even in press reports on serious questions of general interest".<sup>282</sup> In this case the use of terms such as "leeches" about certain managers was undeniably likely to harm their reputations and warranted punishment. However, the remarks had been part of a heated public debate concerning alleged management problems in public television. They had initially been made by radio programme presenters, the applicant "confining himself to confirming them ... during a rapid, spontaneous exchange" (§48). Furthermore, no suit for slander or defamation had been filed by the persons concerned. Termination of the applicant's employment contract with no compensation was therefore a measure "of extreme severity, whereas other, less harsh and more appropriate disciplinary measures could have been envisaged" (§49).

In March 2000 the Court found that there had been no violation of Article 10 in the *Wabl* case. A Green Party MP in the Austrian parliament had objected to an order restraining him from repeating the expression "Nazi journalism", which he had used about an article damaging to his reputation. The Court acknowledged the defamatory nature of the article and

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282. *Fuentes Bobo v. Spain*, No. 39293/98, judgment of 29 February 2000, §45.



the MP's right to take offence. In addition, the existence of a debate of general interest was questionable.

However, it was decided that the national authorities had duly weighed the interests at stake bearing in mind the "special stigma which attaches to activities inspired by National Socialist ideas".<sup>283</sup> The Court also noted that the applicant had not taken action against the newspaper and had not used the impugned expression immediately but a few days after the article was published. Further, the limited scope of the restraint left him at liberty to express his opinion of the newspaper article in other terms.

In the *Constantinescu* case the leader of a teachers' trade union had been convicted of defaming three teachers by calling them "thieves" (*delapidatori*) after theft and other charges against them had been dropped. The Court ruled that the right to freedom of expression had its limits even if the statements had been part of a debate on the independence of the unions and the functioning of the judiciary, which were questions of public interest. The applicant had a duty to keep within certain limits, in the interests, in particular, of the reputations and rights of others, notwithstanding his position as union representative. Acknowledging the defamatory nature of the remark, the Court held "that it [had been] quite feasible for the applicant to express criticisms and thereby contribute to the free public discussion of trade union issues without using the word *delapidatori*".<sup>284</sup> It therefore concluded that there had been no violation of Article 10.

The Court found a violation of Article 10 in the *Jerusalem* case. The applicant, a member of the Vienna Municipal Council, complained of an order prohibiting her from repeating statements she had made referring to two associations as sects of a "totalitarian character" and showing "fascist tendencies". The Court noted that the applicant held political office and made the point that freedom of expression was particularly important for the people's elected representatives. Further, like politicians, pri-

283. *Wabl v. Austria*, No. 24773/94, judgment of 21 March 2000, §41.

284. *Constantinescu v. Romania*, No. 28871/95, judgment of 27 June 2000, Reports 2000-VIII, §74.



vate individuals and associations laid themselves open to scrutiny when they entered the arena of public debate. The two associations were active in a field of public concern and should have shown greater tolerance of criticism. The statements had also been made during a political debate in the municipal council. The injunction granted against the applicants therefore amounted to disproportionate interference.<sup>285</sup>

In the *Marônek* case the applicant had been ordered to pay damages because of an open letter in which he had accused two people of unlawfully occupying a flat. The Court noted that the letter raised issues capable of affecting the general interest, namely housing policy at a time when state-owned apartments were about to be denationalised. In addition, in the light of the letter as a whole, the statements did not appear excessive. Most of the events on which the applicant relied had been made public earlier in the press. In view of the relatively large amount of compensation the applicant had been required to pay, there was no reasonable relationship of proportionality between the impugned measures and the aim pursued.<sup>286</sup>

The *Feldek* case, determined in July 2001, concerned the applicant's conviction for defamation after he had made critical statements about a minister, referring *inter alia* to his "fascist past". The Court treated the impugned statements as value judgments.

In this case the applicant's remarks had been based on information that had already been made public in the press and by the minister himself in his autobiography. They concerned a public figure and were part of political debate on issues of general interest concerning the country's history. In expressing his opinion the applicant had not affected the minister's career or private life. The conviction was accordingly found not to be "necessary in a democratic society".<sup>287</sup>

In the *De Diego Nafria* case the Court decided that the dismissal of a senior official of the Bank of Spain for writing a letter accusing the bank's

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285. *Jerusalem v. Austria*, No. 26958/95, judgment of 27 February 2001, Reports 2001-II.

286. *Marônek v. Slovakia*, No. 32686/96, judgment of 19 April 2001, Reports 2001-III.

287. *Feldek v. Slovakia*, No. 29032/95, judgment of 12 July 2001, Reports 2001-VIII.



directors of “gravely unlawful conduct” had not breached Article 10 since the accusations, having no basis in fact, amounted to gratuitous personal attacks. Nor had they been part of public debate on a matter of general interest. They differed from a rapid, spontaneous oral exchange since he had made them in writing, and the applicant’s status as an official also required him to show greater restraint in his use of language.<sup>288</sup>

In March 2002 the Court delivered judgment in the *Nikula* case concerning a damages award against a defence counsel for statements she had made accusing a public prosecutor of engaging in unlawful behaviour in the context of proceedings against her client. The Court held that civil servants had to be protected from offensive verbal attacks in the course of their duties. Notwithstanding her position as defence counsel, the applicant did not enjoy unlimited freedom of expression. However, various contracting states made a distinction between the prosecutor’s role as the opponent of the accused and the judge’s role. That distinction should give more protection to an accused’s criticisms of a prosecutor, as opposed to verbal attacks on the judge or the court as a whole. The defence counsel’s statements had been confined to the courtroom and had not amounted to personal insults. They were directed solely at the prosecutor’s conduct in the proceedings. Furthermore, the Court emphasised that it was for counsel themselves, subject to supervision by the bench, “to assess the relevance and usefulness of a defence argument without being influenced by the potential ‘chilling effect’ of ... a ... criminal penalty ...” The applicant’s conviction thus did not answer a “pressing social need” and contravened Article 10.<sup>289</sup>

In March 2003 the Court found that an applicant’s conviction for insult after he had written two letters reproaching a public prosecutor with *inter alia* dismissing his complaint against a businessman and unlawfully ordering a tap on his telephone was not in breach of Article 10. Public prosecutors were civil servants who formed part of the judicial machinery in the broad sense of the term, and it was in the general interest that they,

288. *De Diego Nafría v. Spain*, No. 46833/99, judgment of 14 March 2002.

289. *Nikula v. Finland*, No. 31611/96, judgment of 21 March 2002, Reports 2002-II.



like bailiffs, solicitors and similar professionals, should enjoy public confidence. Although in a democratic society individuals were entitled to criticise the administration of justice and the officials involved in it, such criticism must keep within certain bounds, which had been overstepped in this case.<sup>290</sup>

In the *Appleby* case the applicants complained of being prevented from collecting signatures for a petition inside a shopping mall owned by a private company. The Court found that the government did not bear any direct responsibility for the restrictions on the applicants' freedom of expression. The issue was whether the Government had failed in its positive obligation to protect the applicants' rights from interference by the private owner. In this case, in addition to protection of freedom of expression, regard had to be had to the owner's right to respect for his property. The restrictions had not totally prevented the applicants from expressing their views. The Court therefore concluded that there had been no violation of Article 10.<sup>291</sup>

In October 2003 the Court concluded that there had been a violation of Article 10 in the *Steur* case, concerning a disciplinary tribunal's decision preventing a lawyer from arguing in proceedings that a social-security investigator had exerted unacceptable pressure on his client in order to obtain certain statements.<sup>292</sup> The Court noted that the applicant's statements were such as to discredit the civil servant but that the limits of acceptable criticism were wider with regard to civil servants exercising their powers than in relation to private individuals. The criticism had been confined to the courtroom and had not amounted to personal insult. The disciplinary authorities had not attempted to establish whether the applicant's allegations were true or had been made in good faith. The Court concluded that the threat of an *ex post facto* review of the applicant's criticism of the manner in which evidence had been taken from his client was difficult to reconcile with his duty as a lawyer to defend

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290. *Lešnik v. Slovakia*, No. 35640/97, judgment of 11 March 2003, Reports 2003-IV.

291. *Appleby and others v. the United Kingdom*, No. 44306/98, judgment of 6 May 2003, Reports 2003-VI.

292. *Steur v. the Netherlands*, No. 39657/98, judgment of 28 October 2003, Reports 2003-XI.



his clients' interests and could have an impact on his practice of his profession.

In December 2003 the Court dealt with a case concerning a disciplinary penalty imposed on a prisoner for writing a manuscript criticising investigators, judges and prison authorities in his country.<sup>293</sup> The Court held that a fair balance had not been struck between the applicant's right to freedom of expression and the need to maintain the authority of the judiciary and protect the reputation of civil servants. By punishing a prisoner with seven days' solitary confinement for making moderately offensive remarks in a private manuscript critical of the justice system – a manuscript which had not been circulated among the other detainees – the authorities had infringed Article 10.

In the *Plon* case the Court found that a permanent injunction preventing the distribution of a book containing confidential medical information about a head of state was contrary to Article 10.<sup>294</sup> Issues relating to a head of state's health and fitness to govern were undoubtedly matters of public interest. In addition, the facts of the case raised issues of transparency of political life. While the interim injunction on distribution had been justified under Article 10, the same did not apply to the final judgment imposing a permanent injunction. With the passage of time the public interest in historical debate came to prevail over the interest in preserving medical confidentiality. Furthermore, the book had been distributed and the information it contained was no longer confidential.

In a May 2004 case the Court emphasised the watchdog role which an environment NGO had been performing when it had criticised certain actions attributed to the mayor of a municipality.<sup>295</sup> Like media professionals, such associations made an essential contribution in a democratic society (§42). The Court examined the grounds on which the domestic courts had convicted the applicant of defamation. In the Court's view, criticising the mayor for local authority policy could not be regarded

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293. *Yankov v. Bulgaria*, No. 39084/97, judgment of 11 December 2003, Reports 2003-XII.

294. *Editions Plon v. France*, No. 58148/00, judgment of 18 May 2004, Reports 2004-IV.

295. *Vides Aizsardzibas Klubs v. Latvia*, No. 57829/00, judgment of 27 May 2004.



as an abuse of freedom of expression (§45), especially as the applicant's statements had either been proven or amounted to personal opinions. The Court concluded that there had been a violation of freedom of expression.

In June 2004 it ruled that the defamation convictions of the author and publisher respectively of a book on historical events which had tarnished the reputation of members of a recognised Resistance movement were not in breach of Article 10.<sup>296</sup> Firstly, the domestic courts had meticulously examined the book and were agreed that it disobeyed the fundamental rules of historical method and made extremely grave insinuations (§77). The Court found the penalty to be proportionate in the circumstances of the case.

The Court concluded that there had been a violation of Article 10 in the *Steel and Morris* case. The applicants, two activists belonging to a small environmental organisation, had distributed a leaflet criticising the McDonald's fast-food chain and had been sentenced to pay damages to the chain. They argued that the sentence was a disproportionate interference with exercise of their right to freedom of expression.

The Court firstly observed that the leaflet contained very serious allegations on topics of general concern. It was therefore a form of "political expression", which according to the Court's case-law required a high level of protection under Article 10. The Court was unconvinced by the argument that as the applicants were not journalists they did not qualify for the high level of protection afforded to the press under Article 10. It held that there was a "strong public interest" in giving that level of protection even to "small and informal campaign groups".

However, like journalists, that type of group must not overstep certain limits and the Court noted that although a degree of hyperbole and exaggeration was to be tolerated in a campaigning leaflet the allegations were very serious nature and were presented as statements of fact rather than value judgments.

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296. *Chauvy and others v. France*, No. 64915/01, judgment of 29 June 2004, Reports 2004-VI.



The Court went on to examine the factual basis for the applicants' allegations and thus the burden of establishing the truth of the information contained in the leaflet. It reiterated the principle laid down in the *McVicar* judgment (see above, p. 30), that it was not in principle incompatible with Article 10 to place on a defendant in libel proceedings the onus of proving to the civil standard the truth of defamatory statements. The fact that the plaintiff in the present case was a large multinational company should not in principle relieve the applicants of that obligation. Although the limits of acceptable criticism were wider in the case of such companies, in addition to the public interest in open debate about business practices there was 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" (§94).

That being the case, the Court found that the burden on the applicants to prove the truth of the allegations contained in the leaflets represented an "enorm[ous] and complex ... undertaking"; if it were not to be in breach of Article 10, it ought to have been coupled with a measure of procedural fairness and equality of arms. Bearing in mind the possible "chilling" effect of a lack of procedural fairness and equality, the Court concluded that the violation of Article 6 §1 of the Convention (owing to the lack of legal aid) here gave rise to a violation of Article 10. In addition, the amount of damages the applicants had been ordered to pay had failed to strike the right balance.<sup>297</sup>

In February 2005 the Court delivered judgment in the *Pakdemirli* case, concerning the sentencing of an MP to pay damages for making insulting remarks about the President of the Republic. The Court made the preliminary point that the issue was the extremely large amount of damages awarded, and more specifically the grounds the courts had given to justify the amount. The case involved two people with a long history of political antagonism. It thus had a political context, in which the limits of acceptable criticism should be wider than in relation to private individuals. How-

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297. *Steel and Morris v. the United Kingdom*, No. 68416/01, judgment of 15 February 2005, Reports 2005-II.



ever, the terms used by the applicant more closely resembled a hail of insults and imprecations than political criticism and were therefore difficult to interpret as opinion advanced in a political debate.

In the light of these observations the Court went on to examine the grounds for the damages award and the proportionality between the amount of damages and the aim pursued under national legislation. It referred in this connection to the precedent it had established in the *Tolstoy Miloslavsky* case (see above, p. 16). It noted that the domestic courts had applied the criterion of socio-economic status, laid down in the relevant domestic legislation, in a way which departed from the normal practice, using it in this case to set the damages as high as possible. Further, the assessment of the civil penalty seemed to have been arbitrary, having been made in the light not of the wrong suffered but of the special status enjoyed by the President of the Republic. Finally, the domestic court had had regard – other than to the criteria to be applied in determining the amount of damages – solely to the fact that, had he not had the benefit of parliamentary immunity, he would have been prosecuted. However, a civil court was not entitled to substitute itself for a criminal court.

In the light of these considerations, and given that this was the highest amount of damages ever awarded in Turkey for harming a person's reputation, the Court concluded that such an award could not be regarded as "necessary in a democratic society". It was therefore in breach of Article 10 of the Convention.<sup>298</sup>

In the *Bırol* case the Court found that a trade unionist's conviction for insults was contrary to Article 10. The applicant had been convicted after giving a speech at a demonstration in which she had said: "They appoint bloodstained fascists Minister of Justice. They put fascists and murderers in charge of the government." The Court applied its established case-law, noting that the speech, although hostile to the Minister of Justice, had not contained any kind of incitement to violence or insurrection and had not

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298. *Pakdemirli v. Turkey*, No. 35839/97, judgment of 22 February 2005.



been hate speech. The comments had been made at an outdoor demonstration, preventing the applicant from rewording, perfecting or retracting them. In nature and severity the penalties imposed were disproportionate to the aim pursued.<sup>299</sup>

In March 2005 the Court concluded that there had been a violation of Article 10 in the *Sokolowski* case, in which a member of an association had been convicted of defamation after the publication of a political leaflet insinuating that municipal councillors were electing themselves as members of the election commission. Putting the facts of the case into context, the Court reasoned that the leaflet raised important issues that might give rise to serious public debate on the rules of conduct applicable to elected representatives of the local community. Consequently, the Court's case-law concerning criticism of politicians ought to apply. The statements made in the leaflet amounted to value judgments, so the applicant was not required to prove that his allegations were true as the national courts had asked him to do. Bearing in mind the irony and satire used in the leaflet, its minor impact (only 150 copies had been printed) and the fact that the damages award against the applicant was equivalent to his monthly income, the Court ruled that the disputed interference was not "necessary in a democratic society".<sup>300</sup>

In the *Turhan* case, examined in May 2005, the Court dealt with a writer's conviction for defaming a minister of state in a book. The Court noted that the allegedly defamatory remarks in the book amounted to the author's opinion following an interview with the minister, which had already been published in a magazine. They were value judgments and undoubtedly concerned an issue of public interest. In the light of this, the Court pointed out that the limits of acceptable criticism were wider regarding a politician than a private individual. The value judgments in question were based on information already known to the public, so there was no need to prove their basis in fact. There had been a violation of Article 10.<sup>301</sup>

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299. *Biröl v. Turkey*, No. 44104/98, judgment of 1 March 2005.

300. *Sokolowski v. Poland*, No. 75955/01, judgment of 29 March 2005.



The *Paturel* case<sup>302</sup> concerned an application from a writer convicted of defaming an association following the publication of a book attacking malpractice by private anti-sect movements in receipt of public funding. Firstly, the Court noted that the book contributed to a debate of public interest. In addition, contrary to the view taken by the domestic courts, the applicant's book expressed value judgments with a basis in fact. Associations must accept criticism in the context of debate on their activities. Any animosity between the applicant, a Jehovah's Witness, and the association in question did not constitute relevant and sufficient grounds for the applicant's conviction. Nor were the nature and severity of the penalties proportionate to the aims pursued. The Court concluded that there had been a violation of Article 10.

## 2. Decisions of the Commission and the Court

The Commission declared an application inadmissible in February 1995 and found that an injunction prohibiting an opponent of abortion from handing out leaflets in the vicinity of a clinic where abortions were practised was necessary for the protection of the rights of others.<sup>303</sup>

The Commission and the Court have had occasion to underscore the importance of protecting the reputation or rights of others. In the cases concerned the Commission and the Court weighed the interests involved and examined the position of the victim and the circumstances in which the offensive remarks had been made by the applicants.<sup>304</sup>

301. *Turhan v. Turkey*, No. 48176/99, judgment of 19 May 2005.

302. *Paturel v. France*, No. 54968/00, judgment of 22 December 2005.

303. Application No. 22838/93, *H.J. Van Den Dungen v. the Netherlands*, decision of 22 February 1995, DR80, p. 147.

304. See in particular applications: No. 19363/92, *G. Hirmann v. Austria*, decision of 6 April 1995; No. 20571/92, *G.F. v. Switzerland*, decision of 18 October 1995; No. 25063/94, *H. Trieflinger v. Germany*, decision of 6 September 1995; No. 29364/95, *D.P. v. Romania*, decision of 4 September 1996; No. 31477/96, *J.R. López-Fando Raynaud and E. Pardo Unanua v. Spain*, decision of 15 January 1997; No. 26601/95, *H.-C. Leiningen-Westerburg v. Austria*, decision of 20 January 1997, DR88, p. 85; No. 29473/95, *L. Grech and A. Montanaro v. Malta*, decision of 21 January 1997; No. 29045/95, *H. Mahler v. Germany*, decision of 14 January 1998; No. 18902/91, *H.N. v. Italy*, decision of 27 October 1998, DR94, p. 21; No. 28202/95, *B. Middelburg and others v. the Netherlands*, decision of 21 October 1998; No. 34328/96, *Peree v. the Netherlands*, decision of 17 November 1998; *Immler v. Germany* (decision), No. 34313/96, 2 March 1999; *Lunde v. Norway* (decision), No. 38318/97, 13 February 2001; *Kubli v. Switzerland* (decision), No. 50364/99, 21 February 2002; *Pasalaris and Press Foundation SA v. Greece* (decision), No. 60916/00, 4 July 2002; *Ferragut Pallach v. Spain* (decision), No. 1182/03, 3 February 2004.



An application concerning the dismissal of an employee of the Austrian federal railway company for criticising his employer in leaflets and in a letter published in a magazine was examined by the Court in January 2000. The Court's view was that the applicant had not been taking part in a discussion on problems of public interest and had publicly made harsh criticisms of his employer's services that were capable of damaging its reputation in its clients' eyes. The disciplinary penalty had therefore been necessary in a democratic society and proportionate to the aim pursued. The Court declared the application inadmissible.<sup>305</sup>

In May 2000 the Court examined a case concerning the applicants' defamation conviction for repeated public accusations against a judge and several public officials. It pointed out that in order to do their job properly public officials required the public's trust and needed to be able to work without undue disturbance. It was thus necessary to protect them against verbal attacks and abuse concerning their work. In the present case the need for protection did not have to be evaluated with reference to a matter of public interest or freedom of the press as the criticisms had not been made in a context of that kind. The convictions had been based on the highly injurious nature of the accusations and the interference with the applicants' rights was therefore proportionate to the legitimate aims pursued. The application was declared inadmissible.<sup>306</sup>

In April 2001 the Court ruled on an application concerning an order prohibiting an association from broadcasting information about a medicine and from commenting on the judge's interim order. It noted that debate on public health and, in particular, the side effects of certain medicines, was of public concern. However, the case differed from the *Hertel* case (see above, page 18), as the impugned broadcast singled out one medicine although it was no more harmful than other equivalent products. The association could either have refrained from naming a specific medicine or referred to a whole group of medicines. It followed that the ban on broadcasting the information was necessary in a democratic

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305. *Predota v. Austria* (decision), No. 28962/95, 18 January 2000.

306. *Jääskeläinen and others v. Finland* (decision), No. 32051/96, 4 May 2000.



society to protect the rights of others. The ban on commenting on the judge's order pursued the same aim. The application was thus inadmissible.<sup>307</sup>

A case examined in January 2002 concerned an injunction preventing the applicant from making statements to the general public about the dangers of microwave ovens being scientifically proven without referring to "current differences of opinion". The Court pointed out that this case did not involve a general injunction. The limitation on the applicant's rights was a minor one and did not substantially affect his ability to put forward his views in public. The disputed measure was deemed to be proportionate to the aim pursued, that of protecting the rights of others. The application was ruled inadmissible.<sup>308</sup>

The Court declared inadmissible an application concerning a lawyer's being reprimanded for describing a city's lawyers, judges and public prosecutors as incompetent after improperly conducted proceedings. While lawyers were entitled to comment on the administration of justice, their criticisms must not overstep certain bounds. The accusations here had been directed at the reputation of three professional groups as a whole, and had not raised any issues of public interest. The reprimand had not been disproportionate to the aim pursued and had been necessary in a democratic society for the protection of the reputation of others.<sup>309</sup>

In May 2003 the Court declared admissible an application from three anti-fur activists whose homes had been searched by the authorities. During the searches the police had seized documents relating to the applicants' animal rights activities and had then kept them for an extended period.<sup>310</sup>

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307. *Schweizerische Radio- und Fernsehgesellschaft (SRG) v. Switzerland* (decision), No. 43524/98, 12 April 2001.

308. *Hertel v. Switzerland* (decision), No. 53440/99, judgment of 17 January 2002, Reports 2002-I. The injunction dealt with in the present decision was issued in connection with a retrial judgment delivered by the Swiss Federal Court following Switzerland's conviction for violating Article 10 in the *Hertel* case (see page 18).

309. *Wingerter v. Germany* (decision), No. 43718/98, 21 March 2002.

310. *Purmonen and others v. Finland* (decision), No. 36404/97, 20 May 2003.



In a similar case the Court also declared admissible an application from anti-fur activists whose homes had been searched by the authorities, which had then seized documents relating to their participation in activities opposing the use of fur, particularly the sale of furs by a certain shop.<sup>311</sup>

In February 2004 the Court declared admissible an application concerning a prison sentence and fine imposed on the applicants for defaming the memory of Atatürk after the publication of a book reproducing a series of articles published by the first applicant.<sup>312</sup>

The Court declared admissible an application from the author of a book who had been fined for “insulting one of the religions”.<sup>313</sup>

The Court held that an injunction ordering a politician not to repeat his statements that a businessman had failed to keep promises not to make staff cuts and requiring the politician to withdraw the remarks by publishing a retraction in various newspapers constituted an interference with his freedom of expression. However, the Court agreed with the domestic courts that the statements were factual statements which the applicant had failed to prove. In view of the penalty imposed and given the legitimate interest to be protected the interference could be regarded as necessary.<sup>314</sup>

The Court declared inadmissible an application concerning the applicants’ dismissal for virulently criticising their employer’s policy in their workplace and making offensive remarks about both colleagues and management. The dismissal was the culmination of a series of warnings from the employer, who had been deliberately taunted on several occasions. The applicants’ dismissal was found not to be disproportionate given that their behaviour had destroyed the trust and loyalty underpinning any employment relationship.<sup>315</sup>

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311. *Goussev and Marek v. Finland* (decision), No. 35083/97, 20 May 2003.

312. *Odaba and Koçak v. Turkey* (decision), No. 50959/99, 10 February 2004.

313. *Aydın Tatlav v. Turkey* (decision), No. 50692/99, 6 April 2004.

314. *Öllinger v. Austria* (decision), No. 74245/01, 13 May 2004.

315. *Rodica Cârstea and Veronica Grecu v. Romania* (decision), No. 56326/00, 21 September and 12 October 2004.



In a decision delivered in December 2004 the Court ruled admissible a case in which the applicant had been sentenced to pay damages for writing a letter criticising the head of a local authority.<sup>316</sup>

In a decision of February 2005 it declared admissible an application from a justice ministry official convicted of insulting the deputy prosecutor-general.<sup>317</sup>

In a case determined in June 2005 it examined an application from an association of artists which had been fined for defaming a politician and ordered to refrain from exhibiting a painting depicting the man in sexual positions with other people. The application was declared admissible.<sup>318</sup>

In *Metzger v. Germany*<sup>319</sup> the Court examined an application from a member of a political party who had been fined for describing as Nazis a group of people who were opposed to an old people's home being converted into a foster home for the mentally ill. The Court observed that the applicant's remarks, which it classed as value judgments, had been made in the course of a debate which was of general interest and that a greater degree of tolerance was therefore to be expected of her opponents. Nevertheless, given the seriousness of the words used, the penalty applied was to be considered necessary in a democratic society and proportionate to the aims pursued. The application was declared inadmissible.

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316. *Zakharov v. Russia* (decision), No. 14881/03, 9 December 2004.

317. *Raichinov v. Bulgaria* (decision), No. 47579/99, 1 February 2005.

318. *Vereinigung Bildender Künstler v. Austria* (decision), No. 68354/01, 30 June 2005.

319. *Metzger v. Germany* (decision), No. 56720/00, 17 November 2005.



## **G. Maintaining the authority and impartiality of the judiciary**

### **1. Judgments of the Court**

In the *Schöpfer* case (judgment May 1998) the Court decided that the disciplinary penalty imposed on the applicant by his Bar Association following comments he had made at a press conference concerning the detention of one of his clients did not constitute a violation of Article 10. The applicant had first, in a general and grave manner, publicly expressed his grievances concerning legal proceedings pending before a criminal court and only afterwards had brought an appeal in the National Appeal Court.

The Court reiterated lawyers' specific status as holding a central position in the administration of justice and as intermediaries between the public and the courts. Under the Court's case-law lawyers thus had a "key role"<sup>320</sup> and were expected:

to contribute to the proper administration of justice, and thus to maintain public confidence therein ... It also goes without saying that freedom of expression is secured to lawyers too, who are certainly entitled to comment in public on the administration of justice, but their criticism must not overstep certain bounds. In that connection, account must be taken of the need to strike the right balance between the various interests involved, which include the public's right to receive information about questions

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320. *Schöpfer v. Switzerland*, judgment of 20 May 1998, Reports 1998-III, §29.



arising from judicial decisions, the requirements of the proper administration of justice and the dignity of the legal profession (§33).

In view of this the disciplinary penalty imposed on the applicant was held to be necessary in a democratic society.

In a case in which judgment was delivered in May 2003 the applicant disputed his conviction for insulting the judiciary after he had written a disparaging letter about the judges of a regional court. The Court held that protection of the proper administration of justice was important enough to justify limitations on freedom of expression but that in the present case the prison sentence imposed was disproportionate: the attack on the authority of the judiciary had taken place in the context of an internal exchange of letters, of which the public had not been informed, and it was the first time the applicant had overstepped the bounds of permissible criticism.<sup>321</sup>

In April 2004 the Court ruled on a case concerning an administrative fine imposed on the Chairman of the Bar Council following the publication of an article reporting his comments criticising a Constitutional Court decision. The Court found that the criticisms did not overstep the bounds permitted under Article 10 and concluded that there had been a violation of that article.<sup>322</sup>

In the *Kyprianou* case<sup>323</sup> it examined an application from a lawyer who had received a prison sentence for contempt of court. He had claimed that members of the court before which he was conducting a cross-examination had been talking to each other and passing one another notes (*ravasakia*, a term that can mean, *inter alia*, “love letter” or “short written message normally of an unpleasant nature”). The Court found that the applicant’s comments, albeit discourteous, were confined to the manner in which the judges were conducting the case. The penalty imposed was disproportionately severe in relation to the aims pursued and capable of having a “chilling effect” on lawyers in similar situations. As, in addition,

321. *Skalka v. Poland*, No. 43425/98, 27 May 2003.

322. *Amihalachioaie v. Moldova*, No. 60115/00, judgment of 20 April 2004, Reports 2004-III.

323. *Kyprianou v. Cyprus* [GC], No. 73797/01, judgment of 15 December 2005, Reports 2005-XIII.



the prison sentence had been applied immediately, the procedural unfairness found in the contempt proceedings only compounded the disproportion between the aim pursued and the interference with the applicant's right to freedom of expression. The Grand Chamber of the Court concluded that there had been a violation of Article 10.

## 2. Decisions of the Commission and the Court

In January 1996 the Commission found that a court order that the BBC release films made during a riot to the defence lawyers in criminal proceedings did not constitute a violation of Article 10. The Commission first highlighted the difference between this case and the *Goodwin* case mentioned above (p. 17). In *Goodwin* the information required had been confidential, whereas here the information only concerned the recording of events that had taken place in public and to which no secrecy or confidentiality could be attributed. The provision of evidence was a normal civic obligation in a democratic society and necessary for maintaining the authority and impartiality of the judiciary, given that there was no indication of any risk to the journalists.<sup>324</sup>

In a case examined in April 2000 a public prosecutor had complained of being dismissed as a result of written statements criticising the Minister of the Interior and a political party. The Court pointed out that the rights guaranteed under Article 10 of the Convention also applied to public servants. However, it drew a distinction between this case and the *Vogt* case. In the present case the applicant had continued, in spite of warnings, to behave in a manner incompatible with the impartiality required of someone in his position. He had been less discreet in his political comments and had also infringed the rules governing sick leave. It was important that the public's confidence in the judiciary's independence not be undermined by the behaviour of certain law officers. The application was declared inadmissible.<sup>325</sup>

324. Application No. 25798/94, *British Broadcasting Corporation v. the United Kingdom*, decision of 18 January 1996, DR84-B, p. 129.

325. *Altin v. Turkey* (decision), No. 39822/98, 6 April 2000.



In November 2000 the Court declared admissible an application concerning disciplinary action taken against a judge for reading a newspaper and watching a television channel connected to the PKK.<sup>326</sup>

The Court declared inadmissible an application concerning the dismissal of a judge for misusing her authority in the pursuit of religious aims. The reasons for her dismissal were solely to do with her official activities, not with views she had expressed in private. Neither the fact that she was a member of a church nor her religious convictions had underlain her dismissal. Nor was she prevented from standing or airing her political opinions in local elections. The action taken against her was deemed proportionate to the legitimate aim pursued, namely to uphold the authority and impartiality of the judiciary.<sup>327</sup>

In February 2002 the Court declared inadmissible an application concerning a fine imposed on a lawyer for stating, in the course of proceedings, that an Appeal Court had committed criminal offences. The Court again made the point that lawyers had a central position in the administration of justice as intermediaries between the public and the courts. It was therefore legitimate to expect them to play their part in proper administration of justice and in thus maintaining public confidence in the justice system. In the present case the seriousness and general nature of the charges were hardly compatible with that role. The penalty, not being excessively severe, was found to be necessary to maintaining the authority and impartiality of the judiciary.<sup>328</sup>

In April 2003 the Court declared admissible a case in which a court had convicted a Communist activist of contempt for putting arguments to it that *inter alia* criticised the Turkish judiciary.<sup>329</sup>

In December 2003 the Court ruled on an application concerning an accountant convicted of defaming a judge. Having established that the applicant's duties in relation to the court had been comparable to that of a lawyer, the Court applied the principles established in the *Nikula* and *Steur*

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326. *Albayrak v. Turkey* (decision), No. 38406/97, 16 November 2000.

327. *Pitkevich v. Russia* (decision), No. 47936/99, 8 February 2001.

328. *Hurter v. Switzerland* (decision), No. 53146/99, 21 February 2002.

329. *Saday v. Turkey* (decision), No. 32458/96, 10 April 2003.



cases (see above, pp. 110-111). It decided that, given the insulting tone of his comments and the seriousness of his accusations against the judge, he had failed in his obligation to contribute to the proper administration of justice. He had thereby overstepped the bounds of criticism acceptable in the circumstances of the case. The Court declared the application inadmissible.<sup>330</sup>

A case in which the Court delivered judgment in January 2004 concerned a disciplinary penalty imposed on a lawyer for virulent criticism of a judge in a notice of appeal. Applying the principle established in the *Schöpfer* case (see above, p. 122) and distinguishing the present case from the *Nikula* and *Steur* precedents (see above, pp. 110 and 111), the Court held that the interference with the applicant's freedom of expression was justified in the context of protecting the authority of the judiciary and the judge's reputation. Weighing the various interests involved (the interests of the parties to the case, the requirements of the proper administration of justice and the dignity of the legal profession) and assessing the proportionality of the penalties imposed, the Court concluded that the application was inadmissible.<sup>331</sup>

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330. *Böhm v. Germany* (decision), No. 66357/01, 16 December 2003.

331. *A. v. Finland* (decision), No. 44998/98, 8 January 2004.



# III. Main judgments, decisions and reports

## 1. Judgments of the European Court of Human Rights

### ***De Becker v. Belgium*, judgment of 27 March 1962, Series A No. 4**

lifelong prohibition on the applicant in Belgium from exercising the professions of journalist or author; struck off the list

### ***Engel and others v. the Netherlands*, judgment of 8 June 1976, Series A No. 22**

disciplinary penalty imposed on Dutch servicemen for the publication of articles undermining military discipline; non-violation of Article 10

### ***Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A No. 24**

ban by the British authorities of the book entitled Little Red School Book under the Obscene Publications Act; non-violation of Article 10

### ***Sunday Times (No. 1) v. the United Kingdom*, judgment of 26 April 1979, Series A No. 30**

injunction restraining the publication of an article concerning a drug and the ensuing litigation, this injunction being based on the English law at the time on contempt of court; violation of Article 10

### ***Barthold v. the Federal Republic of Germany*, judgment of 25 March 1985, Series A No. 90**

prohibitions on a veterinary surgeon in the Federal Republic of Germany – under the Unfair Competition Act and the Rules of Professional Conduct – from making certain statements in the popular press; violation of Article 10

### ***Lingens v. Austria*, judgment of 8 July 1986, Series A No. 103**

fining the applicant for having defamed an Austrian politician in a newspaper article; Article 111 of the Austrian Criminal Code; violation of Article 10



***Glasenapp v. the Federal Republic of Germany, judgment of 28 August 1986, Series A No. 104***

***Kosiek v. the Federal Republic of Germany, judgment of 28 August 1986, Series A No. 105***

obligation to swear allegiance to the Constitution in order to be appointed as a civil servant in Germany; non-violation of Article 10

***Leander v. Sweden, judgment of 26 March 1987, Series A No. 116***

ban on access by the applicant to secret information concerning him kept by the Swedish authorities, allegedly on grounds of national security; non-violation of Article 10

***Müller and others v. Switzerland, judgment of 24 May 1988, Series A No. 133***

confiscation by the Swiss authorities of paintings exhibited by a painter and sentencing of him and other applicants to a fine for obscene publications; non-violation of Article 10

***Barfod v. Denmark, judgment of 22 February 1989, Series A No. 149***

fining the applicant for having defamed two lay judges in a newspaper article, under Article 71 of the Greenland Criminal Code; non-violation of Article 10

***Gaskin v. the United Kingdom, judgment of 7 July 1989, Series A No. 160***

refusal by the British administrative authorities concerned to communicate to the applicant a case record which had been established during his minority by the local authority to which he had been entrusted; non-violation of Article 10

***Markt Intern Verlag GmbH and Klaus Beermann v. the Federal Republic of Germany, judgment of 20 November 1989, Series A No. 165***

prohibition, under the German Unfair Competition Act, on a publishing firm from repeating certain statements published in a specialised information bulletin, criticising the business practices of a mail-order firm; non-violation of Article 10

***Groppera Radio AG and others v. Switzerland, judgment of 28 March 1990, Series A No. 173***

prohibition made in Switzerland on a firm holding a collective antennae concession to retransmit by cable programmes which are broadcast from Italy; non-violation of Article 10

***Weber v. Switzerland, judgment of 22 May 1990, Series A No. 177***

judicial proceedings conducted in camera and having resulted in the conviction of a journalist for breaching, during a press conference, the secrecy of investigation for a pending libel action; violation of Article 10

***Autronic AG v. Switzerland, judgment of 22 May 1990, Series A No. 178***

refusal of the Swiss PTT, due to the lack of consent of the transmitting State, to authorise a firm specialised in domestic electronics to receive, by means of a private dish aerial, uncoded television programmes intended for the general public and transmitted by a Soviet telecommunications satellite; violation of Article 10

***Oberschlick (No. 1) v. Austria, judgment of 23 May 1991, Series A No. 204***

libel action brought against the applicant by an Austrian politician and subsequent conviction of the applicant; violation of Article 10



***Observer and Guardian Newspapers Ltd v. the United Kingdom, judgment of 26 November 1991, Series A No. 216***

prohibition on disclosing or publishing details of unauthorised memoirs alleging unlawful conduct by British Security Services and information obtained from the author, a former employee of the Service – restrictions maintained by courts in July 1987, after the book had been published in the United States and become available in the United Kingdom, and remaining in force until trial concluded in October 1988; violation of Article 10 in the second period (July 1987 – October 1988) but not in the first (July 1986–July 1987)

***Sunday Times (No. 2) v. the United Kingdom, judgment of 26 November 1991, Series A No. 217***

prohibition on disclosing or publishing details of unauthorised memoirs alleging unlawful conduct by British Security Services and information obtained from their author, a former employee of the Service; violation of Article 10

***Castells v. Spain, judgment of 23 April 1992, Series A No. 236***

conviction of a militant Basque politician for publication of an article hostile to the Government; violation of Article 10

***Thorgeir Thorgeirson v. Iceland, judgment of 25 June 1992, Series A No. 239***

applicant fined for publication in a newspaper of two articles concerning police brutalities; violation of Article 10

***Schwabe v. Austria, judgment of 28 August 1992, Series A No. 242-B***

applicant's conviction for defamation after having reproached a political person for an offence for which he had already served his sentence; violation of Article 10

***Herczegfalvy v. Austria, judgment of 24 September 1992, Series A No. 244***

complaint concerning the violation of the right to respect for correspondence and the right to receive information during the detention and psychiatric treatment of the applicant; violation of Article 10

***Open Door Counselling Ltd and Dublin Well Woman Centre v. Ireland, judgment of 29 October 1992, Series A No. 246***

injunction made by Irish Supreme Court in March 1988 restraining the applicants [counselling agencies] inter alia from providing pregnant women with information concerning abortion facilities abroad; violation of Article 10

***Hadjianastassiou v. Greece, judgment of 16 December 1992, Series A No. 252***

conviction of an officer by the military courts for having disclosed information of minor importance, but classified as secret; non-violation of Article 10

***Colman v. the United Kingdom, judgment of 28 June 1993, Series A No. 258-D***

restrictions on advertising by private medical practices imposed by the General Medical Council; struck off the list

***Chorherr v. Austria, judgment of 25 August 1993, Series A No. 266-B***

the arrest, detention and conviction of the applicant for disturbing the public order, further to his refusal to stop distributing leaflets and displaying posters at a military parade in Austria; non-violation of Article 10



***Informationsverein Lentia and others v. Austria*, judgment of 24 November 1993, Series A No. 276**

impossibility of setting up and operating private radio or television stations because of the monopoly of the Austrian Broadcasting Corporation; violation of Article 10

***Casado Coca v. Spain*, judgment of 24 February 1994, Series A No. 285**

disciplinary sanction imposed on Spanish lawyer for having advertised his professional services; non-violation of Article 10

***Jacobowski v. Germany*, judgment of 23 June 1994, Series A No. 291-A**

prohibition imposed on a journalist restraining him from disseminating a letter containing adverse comments on a news agency in Germany; non-violation of Article 10

***Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, Series A No. 295-A**

seizure and confiscation of a film considered by the Austrian courts to be blasphemous; non-violation of Article 10

***Jersild v. Denmark*, judgment of 23 September 1994, Series A No. 298**

conviction of a television journalist for aiding and abetting the dissemination of racist statements; violation of Article 10

***Vereinigung Demokratischer Soldaten Österreichs and Gubi v. Austria*, judgment of 19 December 1994, Series A No. 302**

prohibition on distributing a military newspaper in Austrian barracks; violation of Article 10

***Vereniging Weekblad Bluf! v. the Netherlands*, judgment of 9 February 1995, Series A No. 306-A**

seizure and withdrawal from circulation of an issue of the applicant association's magazine because of the publication of a confidential article on the activities of the Internal Security Service; violation of Article 10

***Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A No. 313**

conviction for defamation on the grounds of critical remarks made about several judges and confiscation of copies of the publication; non-violation of Article 10

***Piermont v. France*, judgment of 27 April 1995, Series A No. 314**

expulsion from French Polynesia of a German member of the European Parliament and prohibition on returning following her participation in a demonstration, and prohibition of entry into New Caledonia; violation of Article 10

***Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A No. 316-B**

applicant ordered to pay substantial damages for having libelled a school official by accusing him of past war crimes; violation of Article 10

***Vogt v. Germany*, judgment of 26 September 1995, Series A No. 323**

dismissal of a teacher from the civil service on account of political activities in the German Communist Party; violation of Article 10

***Goodwin v. the United Kingdom*, judgment of 27 March 1996, Reports 1996-II**

disclosure order requiring the applicant, a journalist, to reveal his sources of information; violation of Article 10



**Ahmet Sadik v. Greece, judgment of 15 November 1996, Reports 1996-V**

conviction of a political leader for disturbing the peace by distributing, during an election campaign, printed matter referring to the Muslim population of western Thrace as “Turks”; failure to exhaust domestic remedies

**Wingrove v. the United Kingdom, judgment of 25 November 1996, Reports 1996-V**

refusal by the British Board of Film Classification to grant a classification certificate to a video which it considered to be blasphemous; non-violation of Article 10

**De Haes and Gijssels v. Belgium, judgment of 24 February 1997, Reports 1997-I**

order for two journalists to pay damages for libel in respect of several judges; violation of Article 10

**Telesystem Tyrol Kabeltelevision v. Austria, judgment of 9 June 1997, Reports 1997-III**

refusal to authorise the applicant company to broadcast its programmes over a local cable network; struck off the list

**Oberschlick (No. 2) v. Austria of 1 July 1997, Reports 1997-IV**

conviction for insulting a politician; violation of Article 10

**Worm v. Austria, judgment of 29 August 1997, Reports 1997-V**

conviction of a journalist for wrongfully influencing the outcome of criminal proceedings; non-violation of Article 10

**Radio ABC v. Austria, judgment of 20 October 1997, Reports 1997-VI**

refusal to authorise the creation of a local radio station because of the monopoly which existed prior to amendments to the legislation; violation of Article 10

**Zana v. Turkey, judgment of 25 November 1997, Reports 1997-VII**

conviction of a former mayor for expressing support for terrorist acts in an interview with journalists; non-violation of Article 10

**Grigoriades v. Greece, judgment of 25 November 1997, Reports 1997-VII**

conviction of a conscript for insulting the army, following an insulting letter sent to his commanding officer; violation of Article 10

**Guerra v. Italy, judgment of 19 February 1998, Reports 1998-I**

failure to provide local population with information about risk factor and how to proceed in event of an accident at nearby chemical factory; Article 10 inapplicable

**Bowman v. the United Kingdom, judgment of 19 February 1998, Reports 1998-I**

prosecution following distribution of leaflets by an anti-abortion campaigner prior to general election; violation of Article 10

**Schöpfer v. Switzerland, judgment of 20 May 1998, Reports 1998-III**

disciplinary penalty imposed by the Bar Association on lawyer following criticisms of the judiciary made at a press conference, concerning the detention of one of his clients; non-violation of Article 10



***Incal v. Turkey, judgment of 9 June 1998, Reports 1998-IV***

conviction for participating in the preparation of a leaflet criticising the local authority policy concerning workers, particularly those of Kurdish origin; violation of Article 10

***Hertel v. Switzerland, judgment of 25 August 1998, Reports 1998-VI***

following publication of article, private individual prohibited from stating that consumption of food prepared in microwave ovens was danger to human health; violation of Article 10

***Ahmed and others v. the United Kingdom, judgment of 2 September 1998, Reports 1998-VI***

restrictions on the involvement of senior local government officers in certain types of political activity; non-violation of Article 10

***Lehideux and Isorni v. France, judgment of 23 September 1998, Reports 1998-VII***

conviction for “public defence of war crimes or the crimes of collaboration” following appearance in a national daily newspaper of an advertisement presenting in a positive light certain acts of Marshal Pétain; violation of Article 10

***Steel and others v. the United Kingdom, judgment of 23 September 1998, Reports 1998-VII***

arrest and detention of protesters for breach of the peace – detention after refusal to be bound over; non-violation of Article 10 in respect of the first and second applicants; violation of Article 10 in respect of the third, fourth and fifth applicants

***Janowski v. Poland [GC], No. 25716/94, judgment of 21 January 1999, Reports 1999-I***

conviction of a journalist who joined in an altercation between police officers and fruit sellers; non-violation of Article 10

***Fressoz and Roire v. France [GC], No. 29183/95, judgment of 21 January 1999, Reports 1999-I***

conviction for unlawful possession of photocopies of Inland Revenue documents (income tax returns) following publication by the satirical weekly *Canard enchaîné* of details of the salary of the chairman of an automobile company; violation of Article 10

***Bladet Tromsø and Stensaas v. Norway [GC], No. 21980/93, judgment of 20 May 1999, Reports 1999-III***

conviction, on the strength of an official report which had not been made public, of a newspaper and its chief editor to damages for defamation, following the publication of statements concerning alleged violations of seal hunting regulations; violation of Article 10

***Rekviényi v. Hungary [GC], No. 25390/94, judgment of 20 May 1999, Reports 1999-III***

prohibition forbidding career members of the police to join political parties and engage in political activities; non-violation of Article 10

***Arslan v. Turkey [GC], No. 23462/94, judgment of 8 July 1999***

conviction for disseminating propaganda against the integrity of the State; violation of Article 10



***Başkaya and Okçuoğlu v. Turkey* [GC], Nos. 23536/94 and 24408/94, judgment of 8 July 1999, Reports 1999-IV**

conviction for disseminating propaganda against the integrity of the State in a book published by the applicant and seizure of the book; violation of Article 10

***Ceylan v. Turkey* [GC], No. 23556/94, judgment of 8 July 1999, Reports 1999-IV**

conviction of a member of a trade union for incitement to hatred following the publication of criticisms of State policy in south-east Turkey; violation of Article 10

***Erdoğdu and Ince v. Turkey* [GC], Nos. 25067/94 and 25068/94, judgment of 8 July 1999, Reports 1999-IV**

conviction for disseminating propaganda against the integrity of the State; violation of Article 10

***Gerger v. Turkey* [GC], No. 24919/94, judgment of 8 July 1999,**

conviction for disseminating propaganda against the integrity of the State; violation of Article 10

***Karataş v. Turkey* [GC], No. 23168/94, judgment of 8 July 1999, Reports 1999-IV**

conviction for disseminating propaganda against the integrity of the State; violation of Article 10

***Okçuoğlu v. Turkey* [GC], No. 24246/94, judgment of 8 July 1999**

conviction for disseminating propaganda against the integrity of the State; violation of Article 10

***Polat v. Turkey* [GC], No. 23500/94, judgment of 8 July 1999**

conviction for disseminating propaganda against the integrity of the State in a book published by the applicant, and confiscation of the book; violation of Article 10

***Sürek v. Turkey (No. 1)* [GC], No. 26682/95, judgment of 8 July 1999, Reports 1999-IV**

conviction for disseminating propaganda against the integrity of the State; non-violation of Article 10

***Sürek v. Turkey (No. 2)* [GC], No. 24122/94, judgment of 8 July 1999**

conviction for publishing in a periodical the names of officials responsible for combating terrorism; violation of Article 10

***Sürek v. Turkey (No. 3)* [GC], No. 24735/94, judgment of 8 July 1999**

conviction to a fine and seizure of a publication challenging the integrity of the State; non-violation of Article 10

***Sürek v. Turkey (No. 4)* [GC], No. 24762/94, judgment of 8 July 1999**

prosecution following a publication challenging the integrity of the State; violation of Article 10

***Sürek and Özdemir v. Turkey* [GC], Nos. 23927/94 and 24277/94, judgment of 8 July 1999**

conviction for disseminating propaganda against the integrity of the State and incitement to terrorism following publication of an interview of a member of the PKK; violation of Article 10



**Öztürk v. Turkey [GC], No. 22479/93, judgment of 28 September 1999, Reports 1999-VI**

confiscation of a publication and conviction of a publisher for incitement to hatred; violation of Article 10

**Dalban v. Romania [GC], No. 28114/95, judgment of 28 September 1999, Reports 1999-VI**

conviction for defamation following publication by a journalist of several articles accusing public figures of involvement in fraud; violation of Article 10

**Wille v. Liechtenstein [GC], No. 28396/95, judgment of 28 October 1999, Reports 1999-VII**

statement by the Prince of Liechtenstein that he would not appoint the applicant, then Administrative Court President, to any public office because of ideas he had expressed on constitutional matters; violation of Article 10

**Hashman and Harrup v. United Kingdom [GC], No. 25594/94, judgment of 25 November 1999, Reports 1999-VIII**

case concerning a binding-over order in respect of behaviour contra bonas mores; violation of Article 10

**Nilsen and Johnsen v. Norway [GC], No. 23118/93, judgment of 25 November 1999, Reports 1999-VIII**

representatives of police trade union organisations successfully prosecuted for defamation following comments they made about certain publications reporting police brutality; violation of Article 10

**News Verlags GmbH und Co. KG v. Austria, No. 31457/96, judgment of 11 January 2000, Reports 2000-I**

ban on the publication of photographs of a person in connection with criminal proceedings against that person; violation of Article 10

**Fuentes Bobo v. Spain, No. 39293/98, judgment of 29 February 2000**

dismissal of a television programme director for remarks considered offensive to certain managers of a Spanish public television channel; violation of Article 10

**Özgür Gündem v. Turkey, No. 23144/93, judgment of 16 March 2000, Reports 2000-III**

aggressions, search, arrest and various convictions concerning a newspaper and its staff; violation of Article 10

**Wabl v. Austria, No. 24773/94, judgment of 21 March 2000**

injunction on the applicant, a politician, not to repeat the expression "nazi journalism" which he had used in reference to a newspaper that had published an article about him; non-violation of Article 10

**Bergens Tidende and others v. Norway, No. 26132/95, judgment of 2 May 2000, Reports 2000-IV**

sentencing of a newspaper, its former editor and a journalist to damages for defamation following publication of a series of articles on the patients of a doctor specialising in cosmetic surgery; violation of Article 10



- Erdođu v. Turkey, No. 25723/94, judgment of 15 June 2000, Reports 2000-VI**  
conviction of the editor of a periodical for disseminating propaganda against the indivisibility of the State; violation of Article 10
- Constantinescu v. Romania, No. 28871/95, judgment of 27 June 2000, Reports 2000-VIII**  
conviction of the president of a teachers' trade union for defamation of former union members; non-violation of Article 10
- Sener v. Turkey, No. 26680/95, judgment of 18 July 2000**  
conviction for publishing separatist propaganda in a weekly newspaper; violation of Article 10
- Tele 1 Privatfernsehgesellschaft mbH v. Austria, No. 32240/96, judgment of 21 September 2000**  
refusal to issue a licence to set up and operate a terrestrial private television transmitter; violation of Article 10 for the period from 1993 to 1995; non-violation of Article 10 for the period from 1995 to 1997
- Lopes Gomes da Silva v. Portugal, No. 37698/97, judgment of 28 September 2000, Reports 2000-X**  
conviction of a newspaper manager for defamation in the press; violation of Article 10
- Du Roy and M Laurie v. France, No. 34000/96, judgment of 3 October 2000, Reports 2000-X**  
conviction of two journalists for publishing information about a criminal complaint together with a civil claim; violation of Article 10
- Ibrahim Aksoy v. Turkey, Nos. 28635/95, 30171/96 and 34535/97, judgment of 10 October 2000**  
conviction for separatist propaganda; violation of Article 10
- Tammer v. Estonia, No. 41205/98, judgment of 6 February 2001, Reports 2001-I**  
conviction of a journalist for insult following comments about the private life of a politician's assistant; non-violation of Article 10
- Jerusalem v. Austria, No. 26958/95, judgment of 27 February 2001, Reports 2001-II**  
order prohibiting a member of the Vienna municipal council from repeating statements she made referring to two associations as sects of a "totalitarian character" and showing "fascist tendencies"; violation of Article 10
- Thoma v. Luxembourg, No. 38432/97, judgment of 29 March 2001, Reports 2001-III**  
conviction of a journalist for failing in his duty to impart fair information after he quoted excerpts from an article questioning the honesty of a body of civil servants; violation of Article 10
- Marônek v. Slovakia, No. 32686/96, judgment of 19 April 2001, Reports 2001-III**  
conviction of the applicant to pay damages because of an open letter accusing two people of unlawfully occupying a flat; violation of Article 10



***Cyprus v. Turkey* [GC], No. 25781/94, judgment of 10 May 2001, Reports 2001-IV**

vetting procedure for school textbooks, restrictions on the circulation of Greek-language newspapers and refusal of the competent authorities to protect the right of Turkish Cypriot political opponents to freedom of expression; violation of Article 10 in respect of the first allegation

***Kamil T. Sürek v. Turkey* (friendly settlement), No. 34686/97, judgment of 14 June 2001**

conviction of a newspaper owner for propaganda in favour of illegal terrorist organisations published in three articles; struck off the list following a friendly settlement

***Vgt Verein gegen Tierfabriken v. Switzerland*, No. 24699/94, judgment of 28 June 2001, Reports 2001-VI**

refusal of the competent authorities to broadcast a television advertisement proposed by an association for the protection of animals; violation of Article 10

***Feldek v. Slovakia*, No. 29032/95, judgment of 12 July 2001, Reports 2001-VIII**

conviction of the applicant for defamation following statements referring to a minister's "fascist past"; violation of Article 10

***Ekin Association v. France*, No. 39288/98, judgment of 17 July 2001, Reports 2001-VIII**

ministerial decision banning the circulation of a book on various aspects of the Basque culture and specificity; violation of Article 10

***E.K. v. Turkey*, No. 28496/95, judgment of 7 February 2002**

conviction of the owner of a publishing company for separatist propaganda on account of articles containing comments on the situation in south-east Turkey; violation of Article 10

***Dichand and others v. Austria*, No. 29271/95, judgment of 26 February 2002**

injunction prohibiting the editor-in-chief and the owner of a newspaper from repeating certain statements criticising the Chair of a parliamentary legislative committee, particularly as regards his involvement in passing laws bringing about "big advantages" for the publishers he represented as a lawyer; violation of Article 10

***Unabhängige Initiative Informationsvielfalt v. Austria*, No. 28525/95, judgment of 26 February 2002, Reports 2002-I**

injunction prohibiting an association from repeating the expression "racist agitation" in relation to an Austrian political party; violation of Article 10

***Krone Verlag GmbH und Co. KG v. Austria*, No. 34315/96, judgment of 26 February 2002**

injunction prohibiting a newspaper publishing company from publishing photographs of a politician in connection with articles criticising him for receiving unlawful salaries; violation of Article 10

***De Diego Nafría v. Spain*, No. 46833/99, judgment of 14 March 2002**

dismissal of a senior official of the Bank of Spain for writing a letter accusing the bank's directors of "seriously unlawful conduct"; non-violation of Article 10



**Gawęda v. Poland, No. 26229/95, judgment of 14 March 2002, Reports 2002-II**

refusal to register the titles of two periodicals, thereby preventing their publication; violation of Article 10

**Nikula v. Finland, No. 31611/96, judgment of 21 March 2002, Reports 2002-II**

sentencing of defence counsel to pay damages for defamation after accusing a public prosecutor of engaging in unlawful behaviour in the context of the proceedings against her client; violation of Article 10

**McVicar v. the United Kingdom, No. 46311/99, judgment of 5 May 2002, Reports 2002-III**

burden of proof placed on a journalist and his conviction for defamation following the publication of an article accusing a sportsman of using illicit performance-enhancing drugs; non-violation of Article 10

**Altan v. Turkey (friendly settlement), No. 32985/96, judgment of 15 May 2002, Reports 2002-III**

conviction of a journalist for inciting the people to hatred and hostility on account of an article on the problems in south-east Turkey; struck off the list

**Yamurdereli v. Turkey, No. 29590/96, judgment of 4 June 2002**

applicant's conviction for separatist propaganda following a speech given at a meeting, which included comments on the situation in south-east Turkey; violation of Article 10

**Ali Erol v. Turkey (friendly settlement), No. 35076/97, judgment of 20 June 2002**

conviction of the editor of a periodical for incitement to hatred and hostility; struck off the list following a friendly settlement

**Colombani and others v. France, No. 51279/99, judgment of 25 June 2002, Reports 2002-V**

newspaper director and journalist convicted of insulting a foreign head of State because of an article, based on an official report, which called into question the determination of the Moroccan authorities, and in particular the King of Morocco, to combat drug trafficking in their country; violation of Article 10

**Seher Karataş v. Turkey, No. 33179/96, judgment of 9 July 2002**

seizure of a periodical and its editor's conviction for inciting the people to hatred and hostility following the publication of an article containing, inter alia, harsh comments about government policy; violation of Article 10

**Özler v. Turkey (friendly settlement), No. 25753/94, judgment of 11 July 2002**

applicant's conviction for disseminating propaganda against the indivisibility of the State by expressing, in a speech, his opinion on the problems in south-east Turkey; struck off the list following a friendly settlement

**Süreker v. Turkey (No. 5) (friendly settlement), Nos. 26976/95, 28305/95 and 28307/95, judgment of 16 July 2002**

seizure of a periodical and the applicant's criminal conviction following the publication of articles commenting on the problems in south-east Turkey; struck off the list following a friendly settlement



***Freiheitliche Landesgruppe Burgenland v. Austria (friendly settlement), No. 34320/96, judgment of 18 July 2002***

decision ordering a regional branch of a political party to pay damages after publishing in its periodical a caricature, accompanied by a caption, of the director of a regional branch of an opposing political party; struck off the list following a friendly settlement

***Mehmet Bayrak v. Turkey (friendly settlement), No. 27307/95, judgment of 3 September 2002***

conviction for propaganda against the integrity of the State following the publication of books on Kurdish culture; struck off the list

***Karakoç and others v. Turkey, Nos. 27692/95, 28138/95 and 28498/95, judgment of 15 October 2002***

conviction of two trade union leaders and the representative of a newspaper for separatist propaganda on account of a press statement criticising the Turkish authorities' policy in south-east Turkey; violation of Article 10

***Ayse Öztürk v. Turkey, No. 24914/94, judgment of 15 October 2002***

seizure of three issues of a periodical for disseminating separatist propaganda and inciting the people to hatred; violation of Article 10

***Stambuk v. Germany, No. 37928/97, judgment of 17 October 2002***

ophthalmologist fined for disregarding a ban on advertising by co-operating in the writing of a newspaper article presenting his new laser operation technique

***Demuth v. Switzerland, No. 38743/97, judgment of 5 November 2002, Reports 2002-IX***

refusal to grant a licence to broadcast a specialised television programme via cable; non-violation of Article 10

***Özcan Kiliç v. Turkey (friendly settlement), Nos. 27209/95 and 27211/95, judgment of 26 November 2002***

conviction of the publisher of a periodical for separatist propaganda and endorsement of an illegal organisation because of a series of articles commenting on the problems in south-east Turkey; struck off the list

***Informationsverein Lentia v. Austria (No. 2) (friendly settlement), No. 37093/97, judgment of 28 November 2002***

refusal to grant an operating licence to an association wishing to broadcast – via cable – radio and television programmes aimed exclusively at residents of a housing project; struck off the list following a friendly settlement in respect of the complaints relating to the period from 18 August 1994 to 1 August 1996

***Yağın Küçük v. Turkey, No. 28493/95, judgment of 5 December 2002***

conviction for separatist propaganda on account of the publication of a book containing an interview with the leader of the PKK; violation of Article 10

***Çetin and others v. Turkey, Nos. 40153/98 and 40160/98, judgment of 13 February 2003, Reports 2003-III***

ban on distributing a periodical in a region subject to a state of emergency; violation of Article 10



**Erkanli v. Turkey (friendly settlement), No. 37721/97, judgment of 13 February 2003**

applicant's conviction for insulting and vilifying the Republic following the publication of a caricature conveying criticism of certain actions by the State; struck off the list

**Roemen and Schmit v. Luxembourg, No. 51772/99, judgment of 25 February 2003, Reports 2003-IV**

searches of the home and workplace of a journalist being prosecuted for handling information disclosed in breach of professional confidence after he published an article accusing a minister of VAT fraud; violation of Article 10

**C.S.Y. v. Turkey, No. 27214/95, judgment of 4 March 2003**

seizure of a book containing articles criticising the Turkish authorities' policy; violation of Article 10

**Gökçeli v. Turkey, Nos. 27215/95 and 36194/97, judgment of 4 March 2003**

writer's conviction for inciting the people to hatred and hostility after he wrote two articles strongly criticising the Turkish authorities' policy; violation of Article 10

**Lešník v. Slovakia, No. 35640/97, Reports 2003-IV**

applicant's conviction for insult after he wrote two letters accusing a public prosecutor of having inter alia dismissed his complaint against a businessman and unlawfully ordered the tapping of his telephone; non-violation of Article 10

**Appleby and others v. the United Kingdom, No. 44306/98, judgment of 6 May 2003, Reports 2003-VI**

refusal to allow the applicants to collect signatures for a petition inside a shopping mall owned by a private company; non-violation of Article 10

**Perna v. Italy [GC], No. 48898/99, judgment of 6 May 2003, judgment of 6 May 2003-V**

journalist's conviction for defamation after he reproached a judge for his political activism, likening it to an "oath of obedience"; non-violation of Article 10

**Skalka v. Poland, No. 43425/98, judgment of 27 May 2003**

applicant's conviction for insulting the judiciary after he sent an insulting letter about the judges of a regional court; violation of Article 10

**Zarakolu v. Turkey (friendly settlement), No. 32455/96, judgment of 27 May 2003**

conviction for propaganda on behalf of a terrorist organisation following the publication of a book containing an interview with a PKK leader; struck off the list

**Murphy v. Ireland, No. 44179/98, judgment of 10 July 2003, Reports 2003-IX**

prohibition on broadcasting a radio advertisement for a religious meeting; non-violation of Article 10

**Ernst and others v. Belgium, No. 33400/96, judgment of 15 July 2003**

searches and seizures conducted at the homes and offices of four journalists during an investigation into breaches of confidence; violation of Article 10

**Karkin v. Turkey, No. 43928/98, judgment of 23 September 2003**

trade unionist's conviction for inciting the people to hatred and hostility after giving a speech at a demonstration; violation of Article 10



***Caralan v. Turkey (friendly settlement), No. 27529/95, judgment of 25 September 2003***

conviction for disseminating separatist propaganda and propaganda on behalf of a terrorist organisation following the publication of a book setting out a political party's position on the situation in south-east Turkey; struck off the list

***Kızılyaprak v. Turkey, No. 27528/95, judgment of 2 October 2003***

conviction of the owner of a publishing company for propaganda against the indivisibility of the State following the publication of a book on the situation in south-east Turkey; violation of Article 10

***Zarakolu v. Turkey (No. 1) (friendly settlement), No. 37059/97, judgment of 2 October 2003***

seizure of a publication and conviction of the owner of a publishing company for separatist propaganda; struck off the list

***Zarakolu v. Turkey (No. 2) (friendly settlement), No. 37061/97, 2 October 2003***

conviction of the owner of a publishing company for separatist propaganda on account of the publication of a book containing articles criticising State policy in south-east Turkey; struck off the list

***Zarakolu v. Turkey (No. 3) (friendly settlement), No. 37062/97, 2 October 2003***

seizure of a publication containing articles on the situation in south-east Turkey; struck off the list

***Demirtas v. Turkey (No. 1) (friendly settlement), No. 37048/97, 9 October 2003***

applicant's conviction for insulting the Republic and the judiciary following the publication of an article criticising government policy and the operation of the State Security Courts; struck off the list

***Steur v. the Netherlands, No. 39657/98, judgment of 28 October 2003, Reports 2003-XI***

disciplinary court's decision preventing a lawyer from arguing, in the context of proceedings, that a social security investigator had exerted unacceptable pressure on his client in order to obtain certain statements; violation of Article 10

***Krone Verlag GmbH und Co. KG v. Austria (No. 2), No. 40284/98, judgment of 6 November 2003***

newspaper publishing company ordered to pay damages for failing to execute in the prescribed form a court order to publish a notice to the effect that proceedings had been brought against it following a defamatory article; violation of Article 10

***Scharsach and News Verlagsgesellschaft v. Austria, No. 39394/98, judgment of 13 November 2003, Reports 2003-XI***

conviction of a journalist and a periodical for defamation following the publication of an article accusing a politician of supporting neo-Nazi ideas; violation of Article 10

***Gündüz v. Turkey, No. 59745/00, judgment of 4 December 2003, Reports 2003-XI***

leader of a sect convicted of inciting the people to hatred and hostility on account of allegedly blasphemous statements he made during a television programme; violation of Article 10



***Krone Verlag GmbH und Co. KG v. Austria (No. 3), No. 39069/97, judgment of 11 December 2003, Reports 2003-XII***

ban on an advertisement comparing the subscription rates of two newspapers unless the differences in their editorial styles were indicated at the same time; violation of Article 10

***Yankov v. Bulgaria, No. 39084/97, judgment of 11 December 2003, Reports 2003-XII***

disciplinary sanction imposed on a prisoner for writing a manuscript criticising investigators, judges and prison authorities; violation of Article 10

***Abdullah Aydın v. Turkey, No. 42435/98, judgment of 9 March 2004***

applicant's conviction for inciting the people to hatred and hostility after giving a speech criticising government policy; violation of Article 10

***Gerger v. Turkey (No. 2) (friendly settlement), No. 42436/98, judgment of 9 March 2004***

journalist's conviction for incitement to hatred and hostility following the publication of an article criticising State policy; struck off the list

***Radio France and others v. France, No. 53984/00, judgment of 30 March 2003, Reports 2004-II***

radio journalists' conviction for defamation; non-violation of Article 10

***Mehdi Zana v. Turkey (No. 2), No. 26982/95, judgment of 6 April 2004***

former elected representative's conviction for propaganda against the territorial integrity of the State on account of statements he made before the European Parliament and at a press conference; violation of Article 10

***Amihalachioaie v. Moldova, No. 60115/00, judgment of 20 April 2004, Reports 2004-III***

administrative fine imposed on the Chairman of the Bar Council following the publication of an article reporting his comments criticising a Constitutional Court decision; violation of Article 10

***Plon v. France, No. 58148/00, judgment of 18 May 2004, Reports 2004-IV***

interim and subsequent permanent injunction preventing the applicant company from continuing to distribute a book containing confidential medical information about a deceased head of State, and order to pay damages; violation of Article 10

***Vides Aizsardzibas Klubs v. Latvia, No. 57829/00, judgment of 27 May 2004***

applicant ordered to pay damages to the mayor of a municipality after she criticised him in a resolution expressing her concerns about the conservation of coastal dunes; violation of Article 10

***Yurttas v. Turkey, Nos. 25143/94 and 27098/95, judgment of 27 May 2004***

conviction of a former MP belonging to the DEP party (dissolved by the Constitutional Court) for separatist propaganda; violation of Article 10

***Rizos and Daskas v. Greece, No. 65545/01, judgment of 27 May 2004***

applicants ordered to pay damages to a prosecutor following the publication of an article outlining his unlawful conduct and referring to a judicial investigation into it; violation of Article 10



***Chauvy and others v. France, No. 64915/01, judgment of 29 June 2004, Reports 2004-VI***

conviction of an author and a publisher for defaming members of a recognised Resistance movement in a book on historical events; non-violation of Article 10

***Zarakolu and Belge Uluslararası Yayıncılık v. Turkey, Nos. 26971/95 and 37933/97, judgment of 13 July 2004***

conviction of the owner of a publishing company for separatist propaganda and seizure of a book criticising State policy in south-east Turkey; violation of Article 10

***Haydar Yıldırım and others v. Turkey, No. 42920/98, judgment of 15 July 2004***

conviction of incitement to hatred and hostility on the basis of a distinction founded on social class, race and region; violation of Article 10

***Hrico v. Slovakia, No. 49418/99, judgment of 20 July 2004***

conviction of an editor and publisher for publishing a series of articles criticising a Supreme Court judge: violation of Article 10

***Kürkçü v. Turkey, No. 43996/98, judgment of 27 July 2004***

conviction for insulting and vilifying State military forces following the translation and publication of a report by the NGO Human Rights Watch; violation of Article 10

***Sidabras and Džiautas v. Lithuania, Nos. 55480/00 and 59330/00, judgment of 27 July 2004, Reports 2004-VIII***

dismissal of two former KGB officers from the civil service and restrictions on their recruitment; non-violation of Article 10

***Okutan v. Turkey, No. 43995/98, judgment of 29 July 2004***

conviction for propaganda against the integrity of the State following speeches given at a meeting of a political party; violation of Article 10

***Feridun Yazar v. Turkey, No. 42713/98, judgment of 23 September 2004***

conviction for propaganda against the integrity of the State following various speeches given by the applicants at political meetings; violation of Article 10

***Sabou and Pircalab v. Romania, No. 46572/99, judgment of 28 September 2004***

conviction for defamation following the publication of articles on the allegedly improper acquisition of land by the mother of the president of a court; violation of Article 10

***Varlı and others v. Turkey, No. 38586/97, judgment of 19 October 2004***

conviction for disseminating propaganda against the integrity of the State on account of the signature of a press release criticising the security forces' efforts to combat separatist activities; violation of Article 10

***Doaner v. Turkey, No. 49283/99, judgment of 21 October 2004***

conviction for separatist propaganda following a political speech; violation of Article 10

***Rıza Dinç v. Turkey, No. 42437/98, judgment of 28 October 2004***

publisher's conviction for membership of an illegal organisation; non-violation of Article 10



***Maraşlı v. Turkey, No. 40077/98, judgment of 9 November 2004***

applicant's conviction for separatist propaganda following the publication of his article in a weekly newspaper; violation of Article 10

***Dicle v. Turkey, No. 34685/97, judgment of 10 November 2004***

conviction for incitement to hatred and hostility following the publication of an article on the problems in south-east Turkey; violation of Article 10

***Odaba v. Turkey, No. 41618/98, judgment of 10 November 2004***

conviction of the leader of a political party for incitement to hatred and hostility following the dissemination of an open letter about the situation of the population of south-east Turkey; violation of Article 10

***Ayhan v. Turkey (No. 1), No. 45585/99, judgment of 10 November 2004***

conviction for separatist propaganda following comments made in two speeches and an article published in a magazine edited by the applicant; violation of Article 10.

***Ayhan v. Turkey (No. 2), No. 49059/99, judgment of 10 November 2004***

applicant's conviction for separatist propaganda following the publication of a book; violation of Article 10

***Baran v. Turkey, No. 48988/99, judgment of 10 November 2004***

conviction for inciting the people to hatred and hostility by introducing discrimination based on social class; violation of Article 10

***Kalın v. Turkey, No. 31236/96, judgment of 10 November 2004***

conviction of an editor-in-chief for separatist propaganda and inciting the people to hatred and hostility following the publication of two articles; violation of Article 10

***Karhuvaara and Iltalehti v. Finland, No. 53678/00, judgment of 16 November 2004, Reports 2004-X***

conviction for publishing articles interfering with the private life of a member of parliament; violation of Article 10

***Selistö v. Finland, No. 56767/00, judgment of 16 November 2004***

defamation of a surgeon in the press by a journalist; violation of Article 10

***Özkaya v. Turkey, No. 42119/98, judgment of 30 November 2004***

applicant's conviction for inciting the people to hatred and hostility after he gave a speech criticising government policy in south-east Turkey; violation of Article 10

***Elden v. Turkey, No. 40985/98, judgment of 9 December 2004***

politician's conviction for disseminating propaganda against the integrity of the State following a speech criticising the government, given at a demonstration; violation of Article 10

***Cumpănă and Mazăre v. Romania [GC], No. 33348/96, judgment of 17 December 2004, Reports 2004-XI***

applicants' conviction for insults and defamation following the publication of an article, accompanied by a cartoon, accusing a judge of having committed a scam; violation of Article 10



***Pedersen and Baadsgaard v. Denmark* [GC], No. 49017/99, judgment of 17 December 2004, Reports 2004-XI**

two journalists' conviction for defamation after they suggested in a television programme that a chief superintendent might have been responsible for suppressing important evidence during a criminal investigation; non-violation of Article 10

***Busuioc v. Moldova*, No. 61513/00, judgment of 21 December 2004**

conviction for defamation following an article criticising the management of the capital city's airport; violation of Article 10

***Halis v. Turkey*, No. 30007/96, judgment of 11 January 2005**

journalist's conviction for disseminating propaganda supporting an illegal terrorist organisation by reviewing a book written by the leader of the PKK; violation of Article 10

***Zana and others v. Turkey* (friendly settlement), Nos. 51002/99 and 51489/99, judgment of 11 January 2005**

conviction for separatist propaganda and inciting the people to hatred and hostility on the basis of a distinction founded on social class; struck off the list

***Datekin v. Turkey*, No. 36215/97, judgment of 13 January 2005**

conviction of the owner of a publishing company for propaganda against the integrity of the State on account of the publication of a book; violation of Article 10

***Karademirci and others v. Turkey*, Nos. 37096/97 and 37101/97, judgment of 25 January 2005, Reports 2005-I**

conviction of leaders and members of a trade union after they made a statement to the press denouncing the ill-treatment of secondary school pupils, without complying with preliminary statutory requirements; violation of Article 10

***Erdost v. Turkey*, No. 50747/99, judgment of 8 February 2005**

writer's conviction for separatist propaganda following the publication of a political essay; violation of Article 10

***Steel and Morris v. the United Kingdom*, No. 68416/01, judgment of 15 February 2005, Reports 2005-II**

sentencing of the applicants to pay damages after they distributed a leaflet criticising McDonald's; violation of Article 10

***Pakdemirli v. Turkey*, No. 35839/97, judgment of 22 February 2005**

sentencing of an MP to pay damages for making insulting remarks about the President of the Republic during a press conference; violation of Article 10

***Biröl v. Turkey*, No. 44104/98, judgment of 1 March 2005**

trade unionist's conviction for openly insulting the Minister and Ministry of Justice in a speech; violation of Article 10

***Gümüs and others v. Turkey*, No. 40303/98, judgment of 15 March 2005**

conviction of members of several associations for incitement to hatred, via the press, on the basis of a distinction between regions, violation of Article 10

***Taniyan v. Turkey* (friendly settlement), No. 29910/96, judgment of 17 March 2005**

confiscation of several issues of a newspaper publishing articles on the problems in south-east Turkey; struck off the list



***Ağın v. Turkey, No. 46069/99, judgment of 29 March 2005***

prison sentence for propaganda against the integrity of the State via the press; violation of Article 10

***Ukrainian Media Group v. Ukraine, No. 72713/01, judgment of 29 March 2005***

conviction for defamation following the publication of two articles on presidential election candidates; violation of Article 10

***Sokołowski v. Poland, No. 75955/01, judgment of 29 March 2005***

conviction for defamation following the publication of a leaflet insinuating that municipal councillors were electing themselves to the electoral commission; violation of Article 10

***Alinak v. Turkey, No. 40287/98, judgment of 29 March 2005***

seizure of book describing acts of torture committed by security forces against the population of a village in south-east Turkey; violation of Article 10

***Rainys and Gasparavius v. Lithuania, Nos. 70665/01 and 74345/01, judgment of 7 April 2005***

dismissal of two former KGB officers from the civil service and refusal to recruit them; non-violation of Article 10

***Falakaoğlu v. Turkey, No. 77365/01, judgment of 26 April 2005***

conviction for propaganda against the indivisibility of the State following the publication of an article; violation of Article 10

***Teslim Töre v. Turkey, No. 50744/99, judgment of 19 May 2005***

conviction for separatist propaganda following the publication of a magazine article; violation of Article 10

***Turhan v. Turkey, No. 48176/99, judgment of 19 May 2005***

conviction of the author of a book for defaming a Minister of State; violation of Article 10

***Pamak v. Turkey, No. 39708/98, judgment of 7 June 2005***

journalist's conviction for inciting the people to hatred and hostility after he published an article criticising government policy; violation of Article 10

***Ergin v. Turkey (No. 1), No. 48944/99, judgment of 16 June 2005***

conviction for inciting the people to hatred and hostility on the basis of a distinction founded on racial or regional origin following the publication of an article; violation of Article 10

***Ergin v. Turkey (No. 2), No. 49566/99, judgment of 16 June 2005***

conviction for inciting the people to hatred and hostility on the basis of a distinction founded on racial or regional origin following the publication of an article; violation of Article 10

***Ergin v. Turkey (No. 3), No. 50691/99, judgment of 16 June 2005***

conviction for inciting the people to hatred and hostility on the basis of a distinction founded on racial or regional origin following the publication of an article; violation of Article 10



***Ergin v. Turkey (No. 4), No. 63733/00, judgment of 16 June 2005***

conviction for inciting the people to hatred and hostility on the basis of a distinction founded on racial or regional origin following the publication of an article; violation of Article 10

***Ergin v. Turkey (No. 5), No. 63925/00, judgment of 16 June 2005***

conviction for inciting the people to hatred and hostility on the basis of a distinction founded on racial or regional origin following the publication of an article; violation of Article 10

***Ergin and Keskin v. Turkey (No. 1), No. 50273/99, judgment of 16 June 2005***

conviction for inciting the people to hatred and hostility on the basis of a distinction founded on social class and for designating a prison director as a target for terrorist organisations following the publication of an article; violation of Article 10

***Ergin and Keskin v. Turkey (No. 2), No. 63926/00, judgment of 16 June 2005***

conviction for designating an army officer as a target for terrorist organisations following the publication of an article; violation of Article 10

***Independent News and Media and Independent Newspapers Ireland Limited v. Ireland, No. 55120/00, judgment of 16 June 2005, Reports 2005-V***

newspaper publishers convicted of libel by a jury, which awarded an exceptionally high level of damages; non-violation of Article 10

***Perinçek v. Turkey, No. 46669/99, judgment of 21 June 2005***

conviction of the president of a political party for propaganda against the integrity of the State on account of his speeches on the problems in south-east Turkey; violation of Article 10

***Grinberg v. Russia, No. 23472/03, judgment of 21 July 2005***

applicant convicted of defamation and ordered to pay damages following the publication of an article criticising a regional governor; violation of Article 10

***Salov v. Ukraine, No. 65518/01, judgment of 6 September 2005, Reports 2005-VII***

partially suspended prison sentence for interfering with citizens' right to vote; violation of Article 10

***İ.A. v. Turkey, No. 42571/98, judgment of 13 September 2005, Reports 2005-VIII***

conviction of the owner of a publishing company for insulting Islam in a publication; non-violation of Article 10

***Han v. Turkey, No. 50997/99, judgment of 13 September 2005***

conviction of a member of a political party for propaganda against the indivisibility of the State in a political speech; violation of Article 10

***Veysel Turhan v. Turkey, No. 53648/00, judgment of 20 September 2005***

conviction of the regional president of a political party for separatist propaganda following an interview given to a television station; violation of Article 10

***Aslı Güneş v. Turkey, No. 53916/00, judgment of 27 September 2005***

suspended sentence imposed on the editor of a periodical for disseminating separatist propaganda in the press; violation of Article 10



**Ünsal Öztürk v. Turkey, No. 29365/95, judgment of 4 October 2005**

conviction of the owner of a publishing company for disseminating propaganda against the unity of the State; violation of Article 10

**Savitchi v. Moldova, No. 11039/02, judgment of 11 October 2005**

journalist's conviction for defaming a police officer in the press; violation of Article 10

**Ceylan v. Turkey (No. 2), No. 46454/99, judgment of 11 October 2005**

trade unionist's conviction for incitement to hatred in a newspaper article; violation of Article 10

**Roche v. the United Kingdom [GC], No. 32555/96, judgment of 19 October 2005, Reports 2005-X**

former serviceman complaining of inadequate access to information about his medical records and a series of tests in which he had participated; non-violation of Article 10

**Osman Özçelik and others v. Turkey, No. 55391/00, judgment of 20 October 2005**

conviction of the leaders of a political party for separatist propaganda in a political speech and written statements; violation of Article 10

**Bakır v. Turkey, No. 54916/00, judgment of 25 October 2005**

journalist's conviction for inciting the people to hatred and hostility in a television broadcast; violation of Article 10

**Yüksel (Geyik) v. Turkey, No. 56362/00, judgment of 25 October 2005**

conviction of a political party delegate for separatist propaganda in a speech at a party congress; violation of Article 10

**Ali Erol v. Turkey (No. 2), No. 47796/99, judgment of 27 October 2005**

newspaper editor's conviction for causing public disaffection with military service and inciting the people to hatred and hostility in a publication; violation of Article 10

**Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria, No. 58547/00, judgment of 27 October 2005**

order to pay compensation to Jörg Haider, who had been criticised in an article on a political book for having minimised the concentration camps, and to publish the judgment, and confiscation of the impugned issue; violation of Article 10

**Haydar Kaya v. Turkey, No. 48387/99, judgment of 8 November 2005**

conviction of a member of a political party for making a statement to the press criticising the people and institutions forming the Turkish State; violation of Article 10

**Abdullah Aydın v. Turkey (No. 2), No. 63739/00, judgment of 10 November 2005**

conviction of the secretary general of a civil-law association for separatist propaganda in a speech given at a public demonstration; violation of Article 10

**Emire Eren Keskin v. Turkey, No. 49564/99, judgment of 22 November 2005**

lawyer's conviction for disseminating separatist propaganda in the press; violation of Article 10



***Tourancheau and July v. France*, No. 53886/00, judgment of 24 November 2005**

journalist and newspaper editor ordered to pay a fine for publishing documents in a criminal case file before they had been read out in open court and complicity in the same offence, non-violation of Article 10

***Urbino Rodrigues v. Portugal*, No. 75088/01, judgment of 29 November 2005**

newspaper editor's conviction for defaming another journalist in the press; violation of Article 10

***Fikret Sahin v. Turkey*, No. 42605/98, judgment of 6 December 2005**

conviction of a member of a political party for inciting the people to hatred and hostility on the basis of a distinction founded on social class, race or region in a speech given at a public demonstration; violation of Article 10

***Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft mbH v. Austria (No. 3)*, Nos. 66298/01 and 15653/02, judgment of 13 December 2005**

criminal conviction for defamation and prohibition on publishing the photograph of a politician's cohabitee without her consent following the publication of an article, illustrated with photographs, making reference to Bonnie and Clyde in order to report the flight and subsequent arrest of the politician and his cohabitee; violation of Article 10

***Kyprianou v. Cyprus [GC]*, No. 73797/01, judgment of 15 December 2005, Reports 2005-XIII**

prison sentence imposed on a lawyer for contempt of court for claiming that members of the court were talking to each other and passing one another notes while he was cross-examining a witness; violation of Article 10

***Korkmaz v. Turkey (No. 1)*, No. 40987/98, judgment of 20 December 2005**

newspaper seized and its proprietor fined on account of an article announcing the end of the ceasefire declared by the leader of the PKK; violation of Article 10

***Korkmaz v. Turkey (No. 2)*, No. 42589/98, judgment of 20 December 2005**

newspaper proprietor fined under the Prevention of Terrorism Act on account of an article alleging that the Minister of Justice had been appointed to that office following numerous incidents (summary executions, disappearances while in police custody and torture) while he was Police Commissioner; violation of Article 10

***Korkmaz v. Turkey (No. 3)*, No. 42590/98, judgment of 20 December 2005**

temporary closure of a newspaper and fine imposed on its proprietor following the publication of a rebuttal in which an illegal organisation denied having perpetrated a burglary; violation of Article 10

***Çetin v. Turkey*, No. 42779/98, judgment of 20 December 2005**

conviction of the editor of an association's newsletter for inciting the people to hatred and hostility in a publication; violation of Article 10

***Paturel v. France*, No. 54968/00, judgment of 22 December 2005**

writer's conviction for defaming an association following the publication of a book entitled *Sectes, religions et libertés publiques* ("Sects, religions and public freedoms"); violation of Article 10



**Çamlibel v. Turkey, No. 64609/01, judgment of 22 December 2005**

conviction of a member of an association for separatist propaganda in a speech given at a public demonstration, violation of Article 10

**Ahmet Turan Demir v. Turkey (friendly settlement), No. 72071/01, judgment of 22 December 2005**

conviction for separatist propaganda in a political speech; struck off the list

**2. Decisions and reports of the European Commission  
and Court of Human Rights**

**Application No. 3071/67, decision of 7 February 1968, *X v. Sweden*, Reports 26, p. 71**

challenging of monopoly; inadmissible

**Application No. 4515/70, decision of 12 July 1971, *Sc. X and the Association of Z v. the United Kingdom*, Yearbook 14, p. 538**

refusal of the BBC to grant broadcasting time to a political party; inadmissible

**Application No. 4750/71, decision of 20 March 1972, *M v. the United Kingdom*, Reports 40, p. 29**

refusal to issue a licence to a commercial radio; inadmissible

**Application No. 6452/74, decision of 12 March 1976, *Sacchi v. Italy (Telediella)*, DR5, p. 43**

State monopoly on cable: question of the constitutionality of the law; inadmissible

**Application No. 8266/78, decision of 4 December 1978, *X v. the United Kingdom (Radio Caroline)*, DR16, p. 190**

prosecution for advertising on behalf of a pirate broadcasting station; inadmissible

**Application No. 7805/77, decision of 5 May 1979, *X and Church of Scientology v. Sweden*, DR16, p. 68**

prohibition of advertisements by a sect; inadmissible

**Application No. 9297/81, decision of 1 March 1982, *X Association v. Sweden*, DR28, p. 204**

refusal to grant broadcasting time; inadmissible

**Application No. 8962/80, decision of 13 May 1982, *X and Y v. Belgium*, DR28, p. 112**

prosecution for unauthorised private use of Citizen Band; inadmissible

**Application No. 9664/82, decision of 1 March 1983, *I. Liljenberg v. Sweden***

prohibition of advertisements; inadmissible

**Application No. 10462/83, decision of 15 March 1984, *B v. the Federal Republic of Germany*, DR37, p. 155**

installation on the roof of an antenna for an amateur radio station; right not guaranteed; inadmissible



**Application No. 9720/82, decision of 7 May 1984, *Barroud v. France***

alleged impossibility of obtaining a concession under the new licensing system; inadmissible

**Application No. 10799/84, decision of 17 May 1984, *Radio 24 AG, S, W and A v. Switzerland*, DR37, p. 236**

ban on cable companies distributing programmes produced by the applicant; inadmissible

**Application No. 10248/83, decision of 5 March 1985, *Aebi v. Switzerland*, DR41, p. 141**

refusal of authorisation to install a private aerial; inadmissible

**Application No. 10405/83, decision of 5 March 1986, *X and others v. Belgium (Radio Scorpio)***

prosecution for operation of a radio station without authorisation due to a three-year delay in the application of the anti-monopoly law; inadmissible

**Application No. 10746/84, decision of 16 October 1986, *Verein Alternatives Lokalradio Bern and Verein Radio Dreyeckland Basel v. Switzerland*, DR49, p. 126**

refusal to grant a local broadcasting concession to the applicant radio stations although they fulfilled the conditions laid down by the law; inadmissible

**Application No. 9675/82, decision of 4 March 1987, *Freie Rundfunk AG i Gr v. the Federal Republic of Germany***

temporary absence of legislation laying down the conditions for the granting of a licence: issue of the constitutionality of the legislation; inadmissible

**Applications Nos. 11553/85 and 11658/85, decision of 9 March 1987, *G.M.T. Hodgson, D. Woolf Productions Ltd and National Union of Journalists and Channel Four Television Co. Ltd v. the United Kingdom*, DR51, p.136**

restrictions on the reporting of criminal proceedings; inadmissible

**Application No. 12439/86, decision of 15 October 1987, *Sundberg v. Sweden***

refusal of the Swedish State radio to broadcast a radio programme produced by the applicant; inadmissible

**Application No. 10267/83, decision of 10 December 1987, *Jean Alexandre and others v. France*, DR54, p. 5**

restrictions in French regulations concerning the advertising of medicines; inadmissible

**Application No. 13252/87, decision of 14 December 1988, *Gemeinde Rothenthurm v. Switzerland*, DR59, p. 251**

restriction on the reception of certain local radio stations for subsequent retransmission by cable; inadmissible

**Application No. 12242/86, decision of 6 September 1989, *Rommelfanger v. the Federal Republic of Germany*, DR62, p. 151**

dismissal of a doctor on account of his statements on abortion; inadmissible



**Application No. 13251/87, decision of 6 March 1991, *Berns and Ewert v. Luxembourg*, DR68, p. 137**

publication in the press of a memorandum by an investigating judge mentioning the applicants' involvement in certain offences; inadmissible

**Application No. 14622/89, decision of 7 March 1991, *Hempfung v. the Federal Republic of Germany*, DR69, p. 272**

reprimand issued against the applicant, a lawyer, for prohibited advertising of his services; inadmissible

**Application No. 16564/90, decision of 8 April 1991, *W and K v. Switzerland***

conviction of applicants for the repeated publishing, sale and rental of obscene videos; inadmissible

**Application No. 15404/89, decision of 16 April 1991, *B. Purcell and others v. Ireland*, DR70, p. 262**

prohibition on broadcasting interviews with certain organisations, in particular a recognised political party; inadmissible

**Application No. 13253/87, decision of 6 June 1991, *R. Ebner v. Switzerland***

prohibition on a cable network to transmit a radio programme; inadmissible

**Application No. 17006/90, decision of 2 July 1991, *K. v. the Federal Republic of Germany***

prohibition of a misleading slogan used by a dance school; inadmissible

**Application No. 13920/88, decision of 11 July 1991, *Nederlandse Omroepprogramma Stichting v. the Netherlands*, DR71, p. 126**

obligation of the applicant, a non-profit foundation of Dutch broadcasting organisations, to pay financial compensation for radio and television coverage of football matches in exchange for broadcasting permission; inadmissible

**Application No. 14644/89, report of 8 October 1991, *Times Newspapers Ltd and A. Neil v. the United Kingdom*, DR73, p. 41**

publication in the press of extracts from a book entitled *Spycatcher*; Committee of Ministers Resolution DH (92) 15 of 15 May 1992; non-violation of Article 10

**Application No. 16956/90 decision of 2 September 1992, *Dumarché v. France***

broadcast of radio programmes without authorisation; inadmissible

**Application No. 17713/91, decision of 2 September 1992, *Schindewolf v. the Federal Republic of Germany***

applicant forced to remove an aerial installation from the roof of his home as it disfigured the appearance of the locality; inadmissible

**Application No. 18897/91, decision of 12 October 1992, *Times Newspapers Ltd and A. Neil v. the United Kingdom***

conviction for contempt of court, and fine for publishing *Spycatcher* extracts already prohibited by injunctions on the *Observer* and *Guardian* newspapers; inadmissible

**Application No. 17505/90, decision of 11 January 1993, *Nydahl v. Sweden***

refusal by authorities to issue a broadcasting licence to the applicant, based on legislation stating that no individual could be granted such a licence; inadmissible



**Application No. 18424/91, decision of 15 January 1993, *Röda Korsets Ungdomsförbund and others v. Sweden***

refusal to issue a broadcasting licence to non-profit making associations by the Community Broadcasting Commission in Sweden on account of their intention to broadcast commercials; inadmissible

**Application No. 18353/91, decision of 6 July 1993, *M.N. v. Spain***

refusal to allocate broadcasting frequencies to local TV stations; inadmissible

**Application No. 16844/90, decision of 13 October 1993, *Nederlandse Omroepprogramma Stichting v. the Netherlands***

fines imposed for having broadcast indirect commercial messages in the context of informative television programmes; inadmissible

**Application No. 18033/91, decision of 29 November 1993, *Cable Music Europe Ltd v. the Netherlands***

prohibition on broadcasting company on transmitting its programmes via Dutch cable networks; inadmissible

**Application No. 21472/93, decision of 11 January 1994, *X SA v. the Netherlands*, DR76, p. 129**

prohibition on a broadcasting company from broadcasting its programmes on the Dutch cable network; inadmissible

**Application No. 18714/91, decision of 9 May 1994, *Brind and others v. the United Kingdom*, DR77, p. 42**

prohibition on broadcasting live interviews or spoken statements by persons expressing clear support for organisations linked with Sinn Fein; inadmissible

**Application No. 18759/91, decision of 9 May 1994, *McLaughlin v. the United Kingdom***

prohibition on broadcasting live interviews or spoken statements by persons representing or expressing support for organisations linked with Sinn Fein; inadmissible

**Application No. 21128/92, decision of 11 January 1995, *U. Walendy v. Germany*, DR80, p. 94**

search and seizure of a magazine in which it had been claimed that the Holocaust did not take place; inadmissible

**Application No. 20683/92, decision of 20 February 1995, *A. Neves v. Portugal***  
conviction of the owner of a magazine for defamation and violation of privacy following the publication of photographs of a well-known businessman engaging in sexual acts with several young women; inadmissible

**Application No. 22838/93, decision of 22 February 1995, *H.J. Van Den Dungen v. the Netherlands*, DR80, p. 147**

injunction prohibiting an opponent of abortion, for a limited period, from approaching a clinic in front of which he had demonstrated and handed out leaflets; inadmissible

**Application No. 23550/94, decision of 24 February 1995, *Association Mondiale pour l'Ecole Instrument de Paix v. Switzerland***

refusal by the Swiss Radio and Television Broadcasting Company SSR to broadcast a programme on the applicant association; inadmissible



**Applications Nos. 23868/94 and 23869/94, decision of 24 February 1995, A. Loersch and Nouvelle Association du Courrier v. Switzerland, DR80, p. 162**

refusal to grant a journalist accreditation with a court; inadmissible

**Application No. 19363/92, decision of 6 April 1995, G. Hirmann v. Austria**

disciplinary sanction imposed on the applicant after the publication of criticisms of his colleagues; inadmissible

**Application No. 21861/93, decision of 28 June 1995, P. Zihlmann v. Switzerland, DR82, p. 12**

disciplinary sanction imposed on a lawyer for issuing a press release criticising the conditions of detention of his client and the conduct of the proceedings; inadmissible

**Application No. 24744/94, decision of 28 June 1995, R.J. Huggett v. the United Kingdom, DR82, p. 98**

challenge by an independent candidate in the European elections of the criteria applied by the BBC for allotting broadcasting time during the election period; inadmissible

**Application No. 25063/94, decision of 6 September 1995, H. Trieflinger v. Germany**

injunction prohibiting the applicant from repeating criticism of his former lawyer; inadmissible

**Application No. 25096/94, decision of 6 September 1995, O.E.F.A. Remer v. Germany, DR82, p. 117**

doubt cast in a publication that the Holocaust had really occurred and criticism of Germany's policy towards refugees; inadmissible

**Application No. 20571/92, decision of 18 October 1995, G.F. v. Switzerland**

fine imposed on a lawyer for making improper comments about the other party's lawyer; inadmissible

**Application No. 25060/94, decision of 18 October 1995, J. Haider v. Austria, DR83, p. 66**

alleged lack of objectivity of reports on a politician by the Austrian Broadcasting and Television Institute; inadmissible

**Application No. 25062/94, decision of 18 October 1995, G. Honsik v. Austria, DR83, p. 77**

conviction for denying in a publication the reality of the Holocaust; inadmissible

**Application No. 25992/94, decision of 29 November 1995, Nationaldemokratische Partei Deutschlands (NPD), Bezirksverband München-Oberbayern v. Germany, DR84, p. 149**

obligation imposed by a local authority to refrain, during a public meeting, from any statement contesting the persecution of the Jews by the Nazis; inadmissible

**Application No. 24398/94, decision of 16 January 1996, F. Rebhandl v. Austria**

conviction for the distribution of a magazine denying the existence of gas chambers in extermination camps; inadmissible



**Application No. 25798/94, decision of 18 January 1996, *British Broadcasting Corporation v. the United Kingdom*, DR84-B, p. 129**

judicial decision, in criminal proceedings, ordering the BBC to make available to the lawyers for the defence films made during a riot; inadmissible

**Application No. 25987/94, decision of 7 March 1996, *A.W. Hins and P.B. Hugenholtz v. the Netherlands*, DR84, p. 135**

refusal to grant a licence for the retransmission of foreign private television programmes, pending a decision by the regional public television body, which enjoyed a preferential right of limited duration; inadmissible

**Application No. 25183/94, decision of 12 April 1996, *L. Schwartz v. Luxembourg***

refusal to grant permission for the construction of an aerial installation for a radio ham; inadmissible

**Application No. 28236/95, decision of 12 April 1996, *F. Bocos Rodríguez v. Spain*, DR85, p. 141**

conviction of a journalist, temporarily in charge of a newspaper, for allowing the publication of anonymous articles; inadmissible

**Application No. 26633/95, decision of 15 May 1996, *E. Bader v. Austria***

complaint by an applicant claiming not to have received objective information during the campaign preceding the referendum on accession to the European Union; inadmissible

**Application No. 31159/96, decision of 24 June 1996, *P. Marais v. France*, DR86, p. 184**

conviction for publishing an article questioning the existence of gas chambers in the Struthof concentration camp; inadmissible

**Application No. 26551/95, decision of 26 June 1996, *D.I. v. Germany***

conviction for denial, in a publication, of the existence of gas chambers in extermination camps; inadmissible

**Application No. 26335/95, decision of 27 June 1996, *Vereniging Radio 100 and others v. the Netherlands***

search and seizure of broadcasting equipment following unauthorised broadcasting of radio programmes; inadmissible

**Application No. 29364/95, decision of 4 September 1996, *D.P. v. Romania***

conviction for defamation of a private individual; inadmissible

**Applications Nos. 28979/95 and 30343/96, decision of 13 January 1997, *G. Adams and T. Benn v. United Kingdom*, DR88 p. 137**

exclusion order against the President of Sinn Fein preventing him from entering England at the invitation of certain MPs and journalists; inadmissible

**Application No. 30262/96, decision of 15 January 1997, *Société Nationale de Programmes France 2 v. France***

conviction of a television channel for broadcasting pictures of wall paintings in a theatre without paying royalties to the artist's assign; inadmissible



- Application No. 31477/96, decision of 15 January 1997, *J.R. López-Fando Raynaud and E. Pardo Unanua v. Spain***  
setting aside of a sentence requiring journalists to pay damages to two judges for comments published about them in the press; inadmissible
- Application No. 28079/95, decision of 17 January 1997, *L. De Angelis v. Italy***  
refusal by local television channels to transmit political broadcasts by the applicant; inadmissible
- Application No. 26601/95, decision of 20 January 1997, *H.-C. Leiningen-Westerburg v. Austria*, DR88 p. 85**  
disciplinary sanction issued to a judge for comments made to a journalist in private; inadmissible
- Application No. 29473/95, decision of 21 January 1997, *L. Grech and A. Montanaro v. Malta***  
conviction of a newspaper editorial staff for publishing an anonymous letter containing false allegations having led the government to withdraw an import permit; inadmissible
- Application No. 27881/95, decision of 26 February 1997, *E. Nurminen and others v. Finland***  
complaint by applicants complaining not to have received objective information during the campaign preceding the referendum on Finland's accession to the European Union; inadmissible
- Application No. 23697/94, decision of 27 February 1997, *R. Saszmann v. Austria***  
conviction for incitement to disregard military laws; inadmissible
- Application No. 32849/96, decision of 7 April 1997, *Grupo Interpres SA v. Spain*, DR89, p. 150**  
refusal to allow a company general access to court archives for the purpose of obtaining information about potential borrowers to sell to financial institutions; inadmissible
- Application No. 27388/95, decision of 9 April 1997, *N. Grauso v. Poland***  
refusal to grant a licence to run a television channel; inadmissible
- Application No. 30401/96, decision of 21 May 1997, *J. Van Der Auwera v. Belgium***  
refusal to authorise a radio ham to set up an aerial in a garden; inadmissible
- Application No. 35125/97, decision of 3 December 1997, *S. Panev v. Bulgaria***  
conviction for defamation following publication of an article in which the applicant listed the names of persons alleged to have taken part in a massacre when the Communist party came to power in 1944; inadmissible
- Application No. 29045/95, decision of 14 January 1998, *H. Mahler v. Germany***  
conviction of a lawyer for insulting a public prosecutor while acting as counsel in criminal proceedings; inadmissible
- Application No. 26113/95, report of 16 April 1998, *Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft mbH v. Austria***  
applicant company ordered to publish a judgment in its political magazine declaring an article it had published criticising national police handling of asylum issues defamatory;



violation of Article 10; Committee of Ministers, Interim resolution DH (98) 378 of 12 November 1998

**Application No. 36773/97, decision of 9 September 1998, *H. Nachtmann v. Austria***

conviction of the applicant for publishing an article suggesting that the number of victims of Nazi mass killings has been overestimated; inadmissible

**Application No. 28202/95, decision of 21 October 1998, *B.A. Middelburg, S. van der Zee and Het Parool B.V. v. the Netherlands***

conviction of the applicants after they published details of a murder committed during the Second World War for which the offender, a film maker, had been granted amnesty; inadmissible

**Application No. 18902/91, decision of 27 October 1998, *H.N. v. Italy, DR94, p. 21***

conviction of a journalist for defamation and for publication of underground press; inadmissible

***Pere v. the Netherlands (decision), No. 34328/96, 17 November 1998***

conviction of the applicant for insults and defamation after he compared an anti-discrimination organisation to the Nazis; inadmissible

**Application No. 25658/94, report of 1 March 1999, *S. Aslantaş v. Turkey***

conviction for separatist propaganda in a speech; violation of Article 10; Committee of Ministers Interim resolution DH (99) 560 of 8 October 1999

***Immler v. Germany (decision), No. 34313/96, 2 March 1999***

conviction of the applicants for insults against two foreigners; inadmissible

***Lindner v. Germany (decision), No. 32813/96, 9 March 1999***

disciplinary sanction imposed on a lawyer for advertising his services; inadmissible

***Witzsch v. Allemagne (decision), No. 41448/98, 20 April 1999***

conviction of the applicant for denying the reality of the Holocaust; inadmissible

***McGuinness v. the United Kingdom (decision), No. 39511/98, 8 June 1999, Reports 1999-V***

refusal to allow the applicant to sit in Parliament and enjoy certain privileges following his refusal to take an oath; inadmissible

***Lévêque v. France (decision), No. 35591/97, 23 November 1999***

rejection of an application for a licence to operate a local television service; inadmissible

***Predota v. Austria (decision), No. 28962/95, 18 January 2000***

dismissal of an employee for criticising his employer in tracts and in a letter to the press; inadmissible

***Hogefeld v. Germany (decision), No. 35402/97, 20 January 2000***

refusal of authorisation to interview a former terrorist before the end of her trial; inadmissible

***Schimaneck v. Austria (decision), No. 32307/96, 1 February 2000***

conviction for involvement in activities inspired by National Socialist ideology; inadmissible



***Altin v. Turkey (decision), No. 39822/98, 6 April 2000***

dismissal of a public prosecutor for criticising the Minister of the Interior and a political party; inadmissible

***Debbasch v. France (decision), No. 49392/99, 27 April 2000***

his arrest prevented the applicant from giving a press conference; inadmissible

***Jääskeläinen and others v. Finland (decision), No. 32051/96, 4 May 2000***

conviction of the applicants for defamation following accusations against public officials; inadmissible

***Drieman and others v. Norway (decision), No. 33678/96, 4 May 2000***

conviction of the applicants for disrupting a lawful whaling expedition; inadmissible

***Brook v. the United Kingdom (decision), No. 38218/97, 11 July 2000***

refusal to grant a shortwave radio broadcasting licence; inadmissible

***Zana v. Turkey (decision), No. 29851/96, 19 September 2000***

conviction of a politician for separatist propaganda in a speech on the situation in south-east Turkey; inadmissible

***United Christian Broadcasters Ltd v. the United Kingdom (decision), No. 44802/98, 7 November 2000***

refusal of the competent authorities to provide an application form for a radio broadcasting licence to a religious charity organisation; inadmissible

***Albayrak v. Turkey (decision), No. 38406/97, 16 November 2000***

disciplinary sanction against a judge for reading a newspaper and watching a television channel linked to the PKK; admissible

***Marlow v. the United Kingdom (decision), No. 42015/98, 5 December 2000***

conviction of the author of a book on the cultivation and production of cannabis; inadmissible

***Campmany and López Galiacho Perona v. Spain (decision), No. 54224/00, 12 December 2000, Reports 2000-XII***

conviction of the director of a periodical and a journalist for publishing an article, illustrated with photographs, concerning the private lives of two celebrities; inadmissible

***Nicol and Selvanayagam v. the United Kingdom (decision), No. 32213/96, 11 January 2001***

arrest, detention and incarceration of two demonstrators for disrupting an angling competition; inadmissible

***Zaoui v. Switzerland (decision), No. 41615/98, 18 January 2001***

confiscation of means of communication from an asylum-seeker who had published documents containing political propaganda; inadmissible

***Pitkevich v. Russia (decision), No. 47936/99, 8 February 2001***

dismissal of a judge for misusing her authority in the pursuit of religious aims; inadmissible

***Lunde v. Norway, No. 38318/97, 13 February 2001***

conviction of a sociologist for defamation following the publication of a book in which he accused a private individual of racism; inadmissible



***Kurier Zeitungsverlag und Druckerei GmbH v. Austria (decision), No. 48481/99, 20 March 2001***

sentencing of a periodical to pay damages for publishing articles and photographs concerning a person suspected of being responsible for a series of letter bombs sent to politicians; struck off the list following a friendly settlement

***Antonopoulos v. Greece (decision), No. 58333/00, 29 March 2001***

allocation of limited air time on radio and television to a small political party during an election campaign; inadmissible

***Schweizerische Radio- und Fernsehgesellschaft (SRG) v. Switzerland (decision), No. 43524/98, 12 April 2001***

injunction on an association not to broadcast information about a medicament or comment on the judge's provisional order; inadmissible

***Kapitan v. Switzerland (decision), No. 55641/00, 12 April 2001***

confiscation and destruction of propaganda documents on the grounds that they were a threat to Switzerland's internal and external security; inadmissible

***McBride v. the United Kingdom (decision), No. 27786/95, 5 July 2001***

arrest and detention of a demonstrator for disturbing the peace; inadmissible

***Skyradio AG and others v. Switzerland (decision), No. 46841/99, 27 September 2001***

refusal to grant a licence to a radio station for young people; inadmissible

***Verdens Gang and Aase v. Norway (decision), No. 45710/99, 16 October 2001, Reports 2001-X***

conviction of a periodical and a journalist for defamation following the publication of an article reporting a patient's critical comments about her plastic surgeon; inadmissible

***Petersen v. Germany (decision), No. 39793/98, 22 November 2001, Reports 2001-XII***

dismissal of a modern history teacher for lack of professional qualification because of the content of two theses written in the days of the German Democratic Republic (GDR); inadmissible

***Volkmer v. Germany (decision), No. 39799/98, 22 November 2001***

dismissal of a teacher from the public education system for bringing political pressure to bear on a pupil in the German Democratic Republic (GDR); inadmissible

***Shamsa v. Poland (decision), No. 40673/98, 10 January 2002***

refusal by the competent authorities to release to the applicant certain documents on file in the context of the procedure relating to his application for refugee status; inadmissible

***Shamsa v. Poland (decision), No. 42649/98, 10 January 2002***

refusal by the competent authorities to release to the applicant certain documents on file in the context of the procedure relating to his application for a residence permit; inadmissible



***Hertel v. Switzerland (decision), No. 53440/99, 17 January 2002, Reports 2002-I***

injunction restraining the applicant from making certain statements about the health dangers of microwave ovens; inadmissible

***Gaudio v. Italy (decision), No. 43525/98, 21 February 2002***

newspaper manager convicted of defamation as a result of an article accusing a mayor of seeking reimbursement of allegedly false invoices; inadmissible

***Kubli v. Switzerland (decision), No. 50364/99, 21 February 2002***

lawyer fined for accusing a District Attorney of having dealings with the mafia; inadmissible

***Hurter v. Switzerland (decision), No. 53146/99, 21 February 2002***

lawyer fined for stating, in the course of proceedings, that an Appeal Court had committed criminal offences; inadmissible

***Wingerter v. Germany (decision), No. 43718/98, 21 March 2002***

reprimand issued against a lawyer who described a city's lawyers, judges and public prosecutors as incompetent following improperly conducted proceedings; inadmissible

***Brown v. the United Kingdom (decision), No. 44223/98, 2 July 2002***

conviction of the sole director of a company which owned a newspaper, following the publication of an article identifying a rape victim; inadmissible

***Pasalaris and Press Foundation SA v. Greece (decision), No. 60916/00, 4 July 2002***

conviction of the editor and the owner of a newspaper for defamation after he accused a public prosecutor of being part of a "judicial clique"; inadmissible

***Temirkan v. Turkey (decision), No. 41990/98, 19 September 2002***

newspaper proprietor's conviction for propaganda against the integrity of the State following the publication of an article on the problems in south-east Turkey; inadmissible

***Wirtschafts-trend Zeitschriften-Verlagsgesellschaft mbH (No. 2) v. Austria (decision), No. 62746/00, 14 November 2002***

order requiring a publisher to pay damages on account of the publication of an article identifying a police officer against whom court proceedings were pending following the death of a foreign national while the latter was being deported; inadmissible

***Lucas v. the United Kingdom (decision), No. 39013/02, 18 March 2003***

conviction for breaching the peace by means of a demonstration blocking a public road, inadmissible

***Krutil v. Germany (decision), No. 71750/01, 20 March 2003***

conviction of a newspaper editor having published an article comparing a journalist to Göbbels, inadmissible

***Krone Verlag GmbH und Co. KG and Mediaprint Zeitungs- und Zeitschriftenverlag GmbH und Co. KG v. Austria (decision), No. 42429/98, 20 March 2003***

companies which owned and published a newspaper ordered to refrain from publishing certain elements of an article criticising a competing newspaper and the latter's stance on a controversial exhibition; inadmissible



***Harlanova v. Latvia (decision), No. 57313/00, 3 April 2003***

order to pay damages for disseminating defamatory allegations against a minister of the church; inadmissible

***Saday v. Turkey (decision), No. 32458/96, 10 April 2003***

Communist activist's conviction for showing contempt towards the court which was trying him; admissible

***P4 Radio Hele Norge ASA v. Norway (decision), No. 76682/01, 6 May 2003, Reports 2003-VI***

refusal to allow a live radio broadcast of a very high-profile murder trial, inadmissible

***Bou Gibert and El Hogar y La Moda SA v. Spain (decision), No. 14929/02, 13 May 2003***

conviction of a magazine director and publishing company following the publication of information about a celebrity's private and family life; inadmissible

***Camacho Lopez Escobar v. Spain (decision), No. 62550/00, 20 May 2003***

disciplinary penalty imposed on a serviceman for undermining army discipline in the media; inadmissible

***Purmonen and others v. Finland (decision), No. 36404/97, 20 May 2003***

search and seizure of documents relating to the applicant's participation in anti-fur activities; admissible

***Goussev and Marenk v. Finland (decision), No. 35083/97, 20 May 2003***

seizure of documents relating to the applicant's participation in anti-fur activities; admissible

***Garaudy v. France (decision), No. 65831/01, 24 June 2003, Reports 2003-IX***

writer's conviction for publishing racially defamatory statements and incitement to racial hatred by means of written statements putting forward negationist arguments; inadmissible

***Société Prisma Presse v. France (decision), No. 66910/01, 1 July 2003***

magazine publishing company ordered to publish a judgment finding that it had, via the press, interfered with a celebrity's private life and infringed her right to her image; inadmissible

***Société Prisma Presse v. France (decision), No. 71612/01, 1 July 2003***

company publishing a weekly magazine convicted of interfering with a celebrity's private life and infringing her right to her image; inadmissible

***Kiliç v. Turkey (decision), No. 40498/98, 8 July 2003***

conviction for forming an illegal organisation whose aim was to undermine the territorial integrity of the State by illegal means; inadmissible

***Alinak v. Turkey (decision), No. 39930/98, 2 September 2003***

national authorities' refusal to grant financial compensation to a member of parliament whose speech had been violently interrupted by another member during a parliamentary session; inadmissible



**Albert-Engelmann-Gesellschaft mbH v. Austria (decision), No. 46389/99, 15 September 2003**

owner and publisher of a Catholic magazine convicted of defamation after publishing an anonymous letter criticising an eminent member of the Catholic Church; admissible

**Freiheitliche Partei Österreichs, Landesgruppe Niederösterreich v. Austria (decision), No. 65924/01, 9 October 2003**

conviction of the regional branch of an Austrian political party for defaming a member of another political party in the press; inadmissible

**Maroglou v. Greece (decision), No. 19846/02, 23 October 2003**

journalist's conviction for defamation and insults following a radio broadcast; inadmissible

**Gündüz v. Turkey (decision), No. 59745/00, 13 November 2003, Reports 2003-XI**

conviction of the leader of an Islamic sect for inciting others to commit offences and to religious hatred by publishing his views in the press, inadmissible

**Böhm v. Germany (decision), No. 66357/01, 16 December 2003**

accountant's conviction for defaming a judge during various trials; inadmissible

**A v. Finland (decision), No. 44998/98, 8 January 2004**

disciplinary penalty imposed on a lawyer following the use of defamatory language directed against a judge during an appeal procedure; inadmissible

**Aksaç v. Turkey (decision), No. 41956/98, 15 January 2004**

conviction for aiding and abetting a terrorist organisation following the rental of premises used by a left-wing newspaper; inadmissible

**Malisiewicz-Gasior v. Poland (decision), No. 43797/98, 29 January 2004**

conviction for defamation following the publication in the media of a statement alleging abuse of power by the Deputy Chairman of the Sejm; admissible

**Odaba and Koçak v. Turkey (decision), No. 50959/99, 10 February 2004**

prison sentence and fine imposed on the applicants for defaming the memory of Atatürk in a book; admissible

**Ferragut Pallach v. Spain (decision), No. 1182/03, 3 February 2004**

applicant convicted of defamation after she made comments and disseminated written statements insulting two doctors who had treated her son before he died; inadmissible

**Varlı and others v. Turkey (decision), No. 57299/00, 18 March 2004**

conviction for separatist propaganda and incitement to hostility; admissible

**Alves Costa v. Portugal (decision), No. 65297/01, 25 March 2004**

conviction for defamation following the publication of articles criticising the services offered by a medical clinic; inadmissible

**Aydın Tatlav v. Turkey (decision), No. 50692/99, 6 April 2004**

applicant ordered to pay a fine for a publication designed to insult one of the religions; admissible



***Kiliç v. Turkey (decision), No. 48083/99, 27 April 2004***

prison sentence for aiding and abetting a terrorist organisation by producing propaganda; inadmissible

***Erol v. Turkey (decision), No. 47796/99, 13 May 2004***

applicant sentenced to two years in prison and ordered to pay a fine, and publication of a daily newspaper suspended for 20 days, for inciting hatred and hostility on the basis of a distinction founded on racial and regional differences and causing public disaffection with military service following the publication of an article; admissible

***Güneş v. Turkey (decision), No. 53916/00, 13 May 2004***

conviction and suspended sentence for separatist propaganda following the publication of an article; admissible

***Dyuldin and Kislov v. Russia (decision), No. 25968/02, 13 May 2004***

conviction for defamation and order to pay damages to members of a regional government following the publication in a newspaper of an appeal signed by several people; admissible

***Öllinger v. Austria (decision), No. 74245/01, 13 May 2004***

injunction on appeal ordering a politician not to repeat statements made about a businessman and to publish a retraction in various newspapers; inadmissible

***Krone Verlag GmbH und Walter v. Austria (decision), No. 36961/02, 13 May 2004***

criminal convictions for defamation, an order to pay a fine and damages, confiscation of remaining stocks of the newspaper in question and an order to publish the judgment following the publication of a film review concerning a letter bomb case. In his article, the author repeated a number of criticisms levelled at the then Interior Minister; inadmissible

***Seurot v. France (decision), No. 57383/00, 18 May 2004***

termination of a teaching contract following the publication of a text in a lower secondary school's weekly newsletter; inadmissible

***Eccleston v. the United Kingdom (decision), No. 42841/02, 18 May 2004***

refusal to grant the applicant access to documents relating to his placement in care as a child; inadmissible

***Österreichischer Rundfunk v. Austria (decision), No. 57597/00, 25 May 2004***

prohibition, on the basis of copyright law, on re-publishing the picture of a person who had been acquitted in one case and sentenced then released in another, so as to protect his reputation; inadmissible

***Filatenko v. Russia (decision), No. 73219/01, 3 June 2004***

applicant ordered to pay damages for defaming members of a party without naming them after he asked a question challenging the party during a television programme; admissible

***Chernysheva v. Russia (decision), No. 77062/01 10 June 2004***

conviction for defamation following the publication of a series of articles on proceedings brought by a public prosecutor; inadmissible



***Sîrbu and others v. Moldova, Nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, judgment of 15 June 2004***

failure to publish in the official gazette a government decision classified as secret, concerning an increase in a special allowance; inadmissible

***Yeilgöz and Firik v. Turkey (decision), No. 58459/00 and 62224/00, 17 June 2004***

conviction of the directors of an association following statements made by participants at a meeting of the association; admissible

***Harabin v. Slovakia (decision), No. 62584/00, 29 June 2004, Reports 2004-VI***

attempt to revoke the appointment of the President of the Supreme Court, allegedly because of his opinions; inadmissible

***Rodica Cârstea and Veronica Grecu v. Romania, No. 56326/00, 21 September and 12 October 2004***

applicants' dismissal from the Rompres news agency following various actions, remarks and events at their workplace, disrupting working relationships and criticising management; inadmissible

***Stângu and Scutelnicu v. Romania, No. 53899/00, 12 October 2004***

order under civil law to pay damages following the publication of an article on a police officer's resignation and the role played by his wife, a judge, in certain cases; admissible

***Yalçın Küçük v. Turkey (No. 2) (decision), No. 56004/00, 21 October 2004***

prison sentence imposed on the applicant following a speech made during a round-table discussion; admissible

***Stângu v. Romania, No. 57551/00, 9 November 2004***

order to pay a fine and damages following an article on the allegedly improper conduct of the Deputy Dean of a military academy; inadmissible

***Norwood v. the United Kingdom (decision), No. 23131/03, 16 November 2004, Reports 2004-XI***

applicant ordered to pay a fine after putting up a British National Party poster in his window; inadmissible

***Porubova v. Russia, No. 8237/03, 9 December 2004***

conviction for defamation and insult following the publication of an article on the homosexual relationship between a politician and a public servant; admissible

***Krasulya v. Russia, No. 12365/03, 9 December 2004***

journalist's conviction for defamation following the publication of an article criticising changes in the rules governing mayoral elections and a mayor's management of his municipality; admissible

***Zakharov v. Russia, No. 14881/03, 9 December 2004***

applicant sentenced to pay damages after writing a letter criticising the head of a local authority; admissible

***Godlevskiy v. Russia, No. 14888/03, 9 December 2004***

order to pay damages and to publish the judgment following an article on corruption among several members of the drugs squad and the proceedings brought against them; admissible



***Kobenter and Standard Verlag GmbH v. Austria (decision), No. 60899/00, 1 February 2005***

conviction of a journalist and a newspaper proprietor for defaming a judge; admissible

***Raichinov v. Bulgaria (decision), No. 47579/99, 1 February 2005***

Justice Ministry official's conviction for insulting the Deputy Prosecutor-General; admissible

***De Almeida Azevedo v. Portugal (decision), No. 43924/02, 15 March 2005***

politician ordered to pay damages for defaming a mayor in the press; admissible

***Karakoç v. Turkey (decision), No. 53919/00, 22 March 2005***

prison sentence imposed on a member of an opposition party for separatist propaganda following the publication of a leaflet and following a speech; admissible

***Yildiz and others v. Turkey (decision), No. 60608/00, 26 April 2005***

permanent ban on the introduction, distribution and sale of a daily newspaper in an area of south-east Turkey subject to a state of emergency; admissible

***Dammann v. Switzerland (decision), No. 77551/01, 3 May 2005***

journalist's conviction for inciting a person to breach professional confidence after he asked a court administrative assistant to disclose information about the criminal records of people arrested during an investigation into a very high-profile burglary; admissible

***Stoll v. Switzerland (decision), No. 69698/01, 3 May 2005***

journalist's conviction for publishing a "strategic" document classified as "confidential", originating from the Swiss Ambassador to the United States; admissible

***Tüzel v. Turkey (decision), No. 57225/00, 10 May 2005***

ban on putting up or distributing a party's posters in areas subject to a state of emergency; admissible

***Calislar v. Turkey (decision), No. 60261/00, 10 May 2005***

writer's conviction for separatist propaganda after he wrote a book containing interviews with two Kurdish leaders; admissible

***Tig v. Turkey (decision), No. 8165/03, 24 May 2005***

applicant refused entry to a university campus on account of his beard; inadmissible

***Giniewski v. France (decision), No. 64016/00, 7 June 2005***

journalist's conviction for publicly defaming a group of people owing to their religious affiliation following the publication of an article in a daily newspaper; admissible

***Imrek v. Turkey (decision), No. 57175/00, 23 June 2005***

conviction for incitement to hatred and hostility on the basis of a distinction founded on race and region and for separatist propaganda following a speech; admissible

***Vereinigung Bildender Künstler v. Austria (decision), No. 68354/01, 30 June 2005***

association fined for defaming a politician and ordered to refrain from exhibiting a painting depicting the man in sexual positions with several people; admissible

***Melnychuk v. Ukraine (decision), No. 28743/03, 5 July 2005***

newspaper's refusal to publish a writer's response to literary reviews by another writer, which had appeared in that newspaper; inadmissible



**Dabrowski v. Poland (decision), No. 18235/02, 25 August 2005**

conviction for defamation and order to pay damages following the publication of an article criticising a deputy mayor; admissible

**Štefanec v. the Czech Republic (decision), No. 75615/01, 25 August 2005**

applicant sentenced to pay a fine for organising a prohibited gathering; admissible

**Chemodurov v. Russia (decision), No. 72683/01, 30 August 2005**

conviction for defamation and order to pay damages following an article criticising the Governor; admissible

**Fikret Başkaya v. Turkey (decision), No. 68234/01, 6 September 2005**

lawyer's conviction for separatist propaganda in a publication; admissible

**Verlagsgruppe News GmbH v. Austria (decision), No. 76918/01, 8 September 2005**

seizure of an issue of a weekly magazine published by the applicant following the publication of an article containing biased coverage of pending defamation proceedings; admissible

**Verlagsgruppe News GmbH v. Austria (decision), No. 10520/02, 8 September 2005**

injunction on the company that published a weekly magazine, preventing it from publishing the picture of the managing director of an enterprise in the context of reports on investigations into his involvement in a tax evasion offence; admissible

**Ivanciuc v. Romania (decision), No. 18624/03, 8 September 2005**

journalist ordered to pay a criminal fine and damages for defaming a politician in the press; inadmissible

**Jones v. the United Kingdom (decision), No. 42639/04, 13 September 2005**

refusal by a local authority responsible for managing cemeteries to inform the public about its burial regulations; inadmissible

**Tosun v. Turkey (decision), No. 4124/02, 13 September 2005**

editor of a periodical ordered to pay a criminal fine for inciting the people to use violence by publishing statements by a member of the PKK leadership; inadmissible

**Segerstedt-Wiberg and others v. Sweden (decision), No. 62332/00, 20 September 2005**

storage of personal information and refusal to allow the applicants access to all the records held by the Swedish secret police concerning them, justified on the grounds of prevention of criminal offences and protection of national security; admissible

**Sevgi Yılmaz v. Turkey (decision), No. 62230/00, 20 September 2005**

conviction for inciting the people to hatred and hostility in a speech given at a public demonstration; admissible

**Güzel v. Turkey (No. 1) (decision), No. 54479/00, 20 September 2005**

prison sentence and fine imposed on the applicant for incitement to hatred and hostility after he made a speech; inadmissible



***Krone Verlags GmbH v. Austria (decision), No. 72331/01, 22 September 2005***

newspaper proprietor convicted of defamation on account of the publication of an article repeating criticisms of allegations by two winners of beauty contests of rape and harassment by a prince; admissible

***Abdullah Levent Tüzel v. Turkey (decision), No. 71459/01, 4 October 2005***

prohibition preventing a political party from distributing or putting up a poster about May Day demonstrations which was deemed likely to disturb public order; admissible

***Weigt v. Poland (decision), No. 74232/01, 11 October 2005***

editor-in-chief of a publication ordered to apologise in writing following the defamation of a municipal councillor in the press; inadmissible

***Wieszczek and Stowarzyszenie Mieszkańców Domów Komunalnych v. Poland (decision), No. 44320/02, 11 October 2005***

seizure of leaflets urging people not to vote for a certain candidate suspected of involvement in a dubious business deal and order requiring an association of village residents and a representative of that association to publish apologies for having distributed them; inadmissible

***Times Newspapers Ltd v. the United Kingdom (decision), No. 23676/03 and 3002/03, 11 October 2005***

conviction of the owner of the company publishing the newspaper The Times for defamation in the press owing to a refusal to apply the common-law rule of qualified privilege; inadmissible

***Perrin v. the United Kingdom (decision), No. 5446/03, 18 October 2005***

prison sentence imposed on a United Kingdom resident for disseminating pornographic material on a free preview page of a website based in the United States; inadmissible

***Colaço Mestre and SIC SA v. Portugal (decision), Nos. 11182/03 and 11319/03, 18 October 2005***

journalist and television station ordered to pay a fine and damages for defamation following the broadcast of an interview insinuating that the President of the Portuguese Football League controlled the referees of football matches played by the club he managed; admissible

***Blake v. the United Kingdom (decision), No. 68890/01, 25 October 2005***

order that copyright in the autobiography of a former member of the British Secret Intelligence Service be transferred to the Crown; inadmissible

***Klein v. Slovakia (decision), No. 72208/01, 8 November 2005***

journalist convicted of defamation and ordered to pay a fine following the publication of an article criticising statements made by an archbishop demanding a ban on the poster advertising the film The People vs. Larry Flynt; admissible

***Radio Twist, a.s. v. Slovakia (decision), No. 62202/00, 8 November 2005***

broadcasting company ordered to pay damages and to apologise for broadcasting an illegal recording of a telephone conversation in which the State Secretary at the Ministry of Justice had taken part; admissible



***Erbakan v. Turkey (decision), No. 59405/00, 10 November 2005***

chairman of a political party convicted of inciting the people to hatred and hostility in a speech given at a demonstration; admissible

***Metzger v. Germany (decision), No. 56720/00, 17 November 2005***

member of a political party fined for having publicly described as Nazis a group of people opposed to an old people's home being converted into a foster home for mentally ill persons; inadmissible

***Romanenko and others v. Russia (decision), No. 11751/03, 17 November 2005***

newspaper proprietors' conviction for defamation following the publication of an article citing extracts from a non-confidential government document; admissible

***Lomakin v. Russia (decision), No. 11932/03, 17 November 2005***

lawyer's conviction for defaming a judge following the publication of two articles accusing her of taking advantage of her position in order to obtain a flat; inadmissible

***Balsytė-Lideikienė v. Lithuania (decision), No. 72596/01, 24 November 2005***

confiscation of impugned material and conviction of the owner of a publishing company for incitement to ethnic hostility following the publication of a racist calendar designating territories belonging to neighbouring countries as "ethnic Lithuanian lands under temporary occupation"; admissible

***Otto v. Germany (decision), No. 27574/02, 24 November 2005***

refusal to promote a police officer on account of his political activities; inadmissible

***Obukhova v. Russia (decision), No. 34736/03, 1 December 2005***

injunction preventing a journalist from publishing information or covering a claim for damages in relation to a traffic accident caused by a judge when the latter was not on duty; admissible

***Vérités santé pratique Sarl v. France (decision), No. 74766/01, 1 December 2005***

refusal to renew a registration certificate entitling a magazine to preferential tax treatment and discounted postal rates; inadmissible

***Nordisk Film & TV A/S v. Denmark (decision), No. 40485/02, 8 December 2005***

court order requiring a television production company to hand over to the police footage from a report, which had not been broadcast, involving suspected paedophiles; inadmissible

***Puzinas v. Lithuania (decision), No. 63767/00, 13 December 2005***

censorship of a prisoner's correspondence and other penalties after the applicant sent a letter complaining of his conditions of imprisonment to recipients other than the competent authorities; admissible

***Witzsch v. Germany (decision), No. 7485/03, 13 December 2005***

prison sentence imposed on the applicant for disparaging the dignity of the deceased after he sent a letter in which he criticised the author of an article published in the press that accused Hitler of having planned the Holocaust; inadmissible



# Index of cases

## A

|  |                 |
|--|-----------------|
| A v. Finland (decision), No. 44998/98, 8 January 2004 .....  | <b>126, 161</b> |
| Adams and Benn v. the United Kingdom, Nos. 28979/95 and 30343/96, decision of 13 January 1997, DR88 .....    | <b>70, 154</b>  |
| Aebi v. Switzerland, No. 10248/83, decision of 5 March 1985, DR41 .....                                      | <b>71, 150</b>  |
| Ağın v. Turkey, No. 46069/99, judgment of 29 March 2005 .....  | <b>21, 144</b>  |
| Ahmed and others v. the United Kingdom, judgment of 2 September 1998, Reports 1998-VI.<br><b>90, 132</b>     |                 |
| Ahmet v. Greece, No. 18877/91, Report of 4 April 1995 .....  | <b>96</b>       |
| Aksaç v. Turkey (decision), No. 41956/98, 15 January 2004 .....  | <b>101, 161</b> |
| Aksoy (Ibrahim) v. Turkey, Nos. 28635/95, 30171/96 and 34535/97, judgment of 10 October 2000 .....           | <b>89, 135</b>  |
| Albayrak v. Turkey (decision), No. 38406/97, 16 November 2000 .....  | <b>125, 157</b> |
| Albert-Engelmann-Gesellschaft mbH v. Austria (decision), No. 46389/99, 15 September 2003<br><b>50, 160</b>   |                 |
| Alexandre (Jean) and others v. France, No. 10267/83, decision of 10 December 1987, DR54 ..<br><b>82, 150</b> |                 |
| Alinak v. Turkey, No. 40287/98, judgment of 29 March 2005 .....  | <b>94, 145</b>  |
| Alinak v. Turkey (decision), No. 39930/98, 2 September 2003 .....  | <b>101, 160</b> |
| Altan v. Turkey (friendly settlement), No. 32985/96, Reports 2002-III .....                                  | <b>22, 137</b>  |
| Altın v. Turkey (decision), No. 39822/98, 6 April 2000 .....   | <b>124, 156</b> |
| Alves Costa v. Portugal (decision), No. 65297/01, 25 March 2004 .....  | <b>51, 161</b>  |
| Amihalachioaie v. Moldova, No. 60115/00, judgment of 20 April 2004, Reports 2004-III<br><b>141</b>           | <b>123,</b>     |
| Antonopoulos v. Greece (decision), No. 58333/00, 29 March 2001 .....   | <b>73, 158</b>  |
| Appleby and others v. the United Kingdom, No. 44306/98, judgment of 6 May 2003, Reports<br>2003-VI .....     | <b>111, 139</b> |
| Arslan v. Turkey (GC), No. 23462/94, judgment of 8 July 1999 .....   | <b>89, 132</b>  |
| Aslantaş v. Turkey, No. 25658/94, Report of 1 March 1999 .....   | <b>96, 156</b>  |



|   |                       |
|---|-----------------------|
| Association Mondiale pour l'Ecole Instrument de Paix v. Switzerland, No. 23550/94, decision of 24 February 1995 ..... | <b>70, 152</b>        |
| Association X v. Sweden, No. 9297/81, decision of 1 March 1982, DR28.....   | <b>70, 149</b>        |
| Autronic AG v. Switzerland, judgment of 22 May 1990, Series A No. 178 .....   | <b>9, 61- 62, 128</b> |
| Aydın Tatlav v. Turkey (decision), No. 50692/99, 6 April 2004.....  | <b>120, 161</b>       |
| Aydın (Abdullah) v. Turkey, No. 42435/98, judgment of 9 March 2004 .....  | <b>89, 141</b>        |
| Aydın (Abdullah) v. Turkey (No. 2), No. 63739/00, 10 November 2005.....   | <b>89, 147</b>        |
| Ayhan v. Turkey (No. 1), No. 45585/99, judgment of 10 November 2004 .....   | <b>21, 143</b>        |
| Ayhan v. Turkey (No. 2), No. 49059/99, judgment of 10 November 2004 .....   | <b>89, 143</b>        |

## B

|   |                        |
|---|------------------------|
| B v. the Federal Republic of Germany, No. 10462/83, decision of 15 March 1984, DR37 ...                         | <b>71, 149</b>         |
| Bader v. Austria, No. 26633/95, decision of 15 May 1996 .....   | <b>77, 154</b>         |
| Bakır v. Turkey, No. 54916/00, judgment of 25 October 2005 .....  | <b>21, 147</b>         |
| Balsytė-Lideikienė v. Lithuania (decision), No. 72596/01, 24 November 2005 .....                                | <b>104, 167</b>        |
| Baran v. Turkey, No. 48988/99, judgment of 10 November 2004.....  | <b>89, 143</b>         |
| Barfod v. Denmark, judgment of 22 February 1989, Series A No. 149 .....   | <b>12- 13, 128</b>     |
| Barroud v. France, No. 9720/82, decision of 7 May 1984.....   | <b>69, 149</b>         |
| Barthold v. the Federal Republic of Germany, judgment of 25 March 1985, Series A No. 90 ...                     | <b>11- 12, 81, 127</b> |
| Başkaya and Okçuoğlu v. Turkey (GC), Nos. 23536/94 and 24408/94, judgment of 8 July 1999, Reports 1999-IV ..... | <b>89, 132</b>         |
| Başkaya (Fikret) v. Turkey (decision), No. 68234/01, 6 September 2005 .....                                     | <b>165</b>             |
| Bayrak (Mehmet) v. Turkey (friendly settlement), No. 27307/95, judgment of 3 September 2002.....                | <b>89, 138</b>         |
| Bergens Tidende and others v. Norway, No. 26132/95, judgment of 2 May 2000, Reports 2000-IV .....               | <b>25, 46, 134</b>     |
| Berns and Ewert v. Luxembourg, No. 13251/87, decision of 6 March 1991, DR68.....                                | <b>43, 150</b>         |
| Biol v. Turkey, No. 44104/98, judgment of 1 March 2005 .....  | <b>116, 144</b>        |
| Bladet Tromsø and Stensaas v. Norway (GC), No. 21980/93, judgment of 20 May 1999, Reports 1999-III .....        | <b>20, 30, 132</b>     |
| Blake v. the United Kingdom (decision), No. 68890/01, 25 October 2005 .....                                     | <b>103, 166</b>        |
| Bocos Rodríguez v. Spain, No. 28236/95, decision of 12 April 1996, DR85.....                                    | <b>45, 154</b>         |
| Böhm v. Germany (decision), No. 66357/01, 16 December 2003.....   | <b>126, 161</b>        |
| Bou Gibert and El Hogar y La Moda SA v. Spain (decision), No. 14929/02, 13 May 2003... ..                       | <b>49, 160</b>         |
| Bowman v. the United Kingdom, judgment of 19 February 1998, Reports 1998-I ..                                   | <b>105, 131</b>        |
| Brind and others v. the United Kingdom, No. 18714/91, decision of 9 May 1994, DR77 ...                          | <b>70, 152</b>         |



|   |                 |
|---|-----------------|
| British Broadcasting Corporation v. the United Kingdom, No. 25798/94, decision of 18 January 1996, DR84-B ..... | <b>124, 153</b> |
| Brook v. the United Kingdom (decision), No. 38218/97, 11 July 2000 .....  | <b>73, 157</b>  |
| Brown v. the United Kingdom (decision), No. 44223/98, 2 July 2002 .....   | <b>48, 159</b>  |
| Busuioc v. Moldova, No. 61513/00, judgment of 21 December 2004.....   | <b>37, 144</b>  |

## C

|   |                    |
|---|--------------------|
| C.S.Y. v. Turkey, No. 27214/95, judgment of 4 March 2003 .....  | <b>89, 139</b>     |
| Cable Music Europe Ltd v. the Netherlands, No. 18033/91, decision of 29 November 1993 ...                     | <b>61, 69, 152</b> |
| Calistar v. Turkey (decision), No. 60261/00, 10 May 2005 .....  | <b>96, 164</b>     |
| Camacho López Escobar v. Spain (decision), No. 62550/00, 20 May 2003.....                                     | <b>101, 160</b>    |
| Çamlıbel v. Turkey, No. 64609/01, judgment of 22 December 2005 .....  | <b>21, 148</b>     |
| Campmany and López Galiacho Perona v. Spain (decision), No. 54224/00, 12 December 2002, Reports 2000-XII..... | <b>46, 157</b>     |
| Caralan v. Turkey (friendly settlement), No. 27529/95, judgment of 25 September 2003..                        | <b>22, 139</b>     |
| Cârstea and Grecu v. Romania (decision), No. 56326/00, 21 September and 12 October 2004.                      | <b>120, 163</b>    |
| Casado Coca v. Spain, judgment of 24 February 1994, Series A No. 285 .....                                    | <b>80, 130</b>     |
| Castells v. Spain, judgment of 23 April 1992, Series A No. 236 .....  | <b>14, 129</b>     |
| Çetin and others v. Turkey, Nos. 40153/98 and 40160/98, judgment of 13 February 2002, Reports 2003-III .....  | <b>31, 138</b>     |
| Çetin v. Turkey, No. 42779/98, judgment of 20 December 2005.....  | <b>21, 148</b>     |
| Ceylan v. Turkey (GC), No. 23556/94, judgment of 8 July 1999, Reports 1999-IV .....                           | <b>21, 133</b>     |
| Ceylan v. Turkey (No. 2), No. 46454/99, judgment of 11 October 2005 .....                                     | <b>21, 147</b>     |
| Chauvy and others v. France, No. 64915/01, judgment of 29 June 2004, Reports 2004-VI                          | <b>113, 141</b>    |
| Chemodurov v. Russia (decision), No. 72683/01, 30 August 2005 .....   | <b>56, 165</b>     |
| Chernysheva v. Russia (decision), No. 77062/01, 10 June 2004.....   | <b>53, 162</b>     |
| Chorherr v. Austria, judgment of 25 August 1993, Series A No. 266-B .....                                     | <b>87, 129</b>     |
| Colaço Mestre and SIC SA v. Portugal (decision), Nos. 11182/03 and 11319/03, 18 October 2005 .....            | <b>58, 166</b>     |
| Colman v. the United Kingdom, judgment of 28 June 1993, Series A No. 258-D .....                              | <b>96, 129</b>     |
| Colombani and others v. France, No. 51279/99, judgment of 25 June 2002, Reports 2002-V ..                     | <b>30-31, 137</b>  |
| Constantinescu v. Romania, No. 28871/95, judgment of 27 June 2000, Reports 2000-VIII .....                    | <b>108, 135</b>    |
| Cumpănă and Mazăre v. Romania (GC), No. 33348/96, judgment of 17 December 2004, Reports 2004-XI .....         | <b>36, 143</b>     |
| Cyprus v. Turkey (GC), No. 25781/94, judgment of 10 May 2001, Reports 2001-IV ...                             | <b>92, 135</b>     |



## D

- D.I. v. Germany, No. 26551/95, decision of 26 June 1996 ..... **45, 154**
- D.P. v. Romania, No. 29364/95, decision of 4 September 1996 ..... **117, 154**
- Dabrowski v. Poland (decision), No. 18235/02, 25 August 2005..... **56, 164**
- Dalban v. Romania (GC), No. 28114/95, judgment of 28 September 1999, Reports 1999-VI...  
**23, 134**
- Dammann v. Switzerland (decision), No. 77551/01, 3 May 2005 ..... **55, 164**
- Datekin v. Turkey, No. 36215/97, judgment of 13 January 2005 ..... **89, 144**
- De Almeida Azevedo v. Portugal (decision), No. 43924/02, 15 March 2005..... **54, 164**
- De Angelis v. Italy, No. 28079/95, decision of 17 January 1997 ..... **70, 155**
- De Becker v. Belgium, judgment of 27 March 1962, Series A No. 4..... **11, 127**
- De Diego Nafría v. Spain, No. 46833/99, judgment of 14 March 2002..... **109- 110, 136**
- De Haes and Gijssels v. Belgium, No. 19983/92, judgment of 24 February 1997, Reports 1997-I  
**17, 131**
- Debbasch v. France (decision), No. 49392/99, 27 April 2000..... **98, 157**
- Demir (Ahmet Turan) v. Turkey (friendly settlement), No. 72071/01, judgment of 22 December  
2005..... **22, 149**
- Demirta v. Turkey (No. 1) (friendly settlement), No. 37048/97, 9 October 2003 ..... **140**
- Demuth v. Switzerland, No. 38743/97, judgment of 5 November 2002, Reports 2002-IX. . **64-  
65, 138**
- Dichand and others v. Austria, No. 29271/95, judgment of 26 February 2002 ... **28-29, 136**
- Dicle v. Turkey, No. 34685/97, judgment of 10 November 2004 ..... **21, 143**
- Doaner v. Turkey, No. 49283/99, judgment of 21 October 2004 ..... **89, 142**
- Drieman and others v. Norway (decision), No. 33678/96, 4 May 2000..... **98, 157**
- Du Roy and Malaurie v. France, No. 34000/96, judgment of 3 October 2000, Reports 2000-X .  
**27, 135**
- Dumarché v. France, No. 16956/90, decision of 2 September 1992 ..... **68, 151**
- Dyuldin and Kislov v. Russia (decision), No. 25968/02, 13 May 2004 ..... **52, 162**

## E

- E.K. v. Turkey, No. 28496/95, judgment of 7 February 2002..... **21, 136**
- Ebner v. Switzerland, No. 13253/87, decision of 6 June 1991 ..... **68, 151**
- Eccleston v. the United Kingdom (decision), No. 42841/02, 18 May 2004 ..... **78, 162**
- Ekin Association v. France, No. 39288/98, judgment of 17 July 2001, Reports 2001-VIII ... **92,  
136**
- Elden v. Turkey, No. 40985/98, judgment of 9 December 2004 ..... **89, 143**
- Engel and others v. the Netherlands, judgment of 8 June 1976, Series A No. 22..... **11, 127**
- Erbakan v. Turkey (decision), No. 59405/00, 10 November 2005..... **46, 166**



|   |                |
|---|----------------|
| Erdoğan and Ince v. Turkey (GC), Nos. 25067/94 and 25068/94, judgment of 8 July 1999, Reports 1999-IV ..... | <b>133</b>     |
| Erdoğan v. Turkey, No. 25723/94, judgment of 15 June 2000, Reports 2000-VI .....                            | <b>134</b>     |
| Erdost v. Turkey, No. 50747/99, judgment of 8 February 2005 .....   | <b>89, 144</b> |
| Ergin and Keskin v. Turkey (No. 1), No. 50273/99, judgment of 16 June 2005 .....                            | <b>21, 146</b> |
| Ergin and Keskin v. Turkey (No. 2), No. 63926/00, judgment of 16 June 2005 .....                            | <b>21, 146</b> |
| Ergin v. Turkey (No. 1), No. 48944/99, judgment of 16 June 2005 .....                                       | <b>21, 145</b> |
| Ergin v. Turkey (No. 2), No. 49566/99, judgment of 16 June 2005 .....                                       | <b>21, 145</b> |
| Ergin v. Turkey (No. 3), No. 50691/99, judgment of 16 June 2005 .....                                       | <b>21, 145</b> |
| Ergin v. Turkey (No. 4), No. 63733/00, judgment of 16 June 2005 .....                                       | <b>21, 145</b> |
| Ergin v. Turkey (No. 5), No. 63925/00, judgment of 16 June 2005 .....                                       | <b>21, 146</b> |
| Erkanli v. Turkey (friendly settlement), No. 37721/97, judgment of 13 February 2003.....                    | <b>138</b>     |
| Ernst and others v. Belgium, No. 33400/96, judgment of 15 July 2003 .....                                   | <b>33, 139</b> |
| Erol v. Turkey (decision), No. 47796/99, 13 May 2004.....   | <b>52, 162</b> |
| Erol v. Turkey (friendly settlement), No. 35076/97, judgment of 20 June 2002.....                           | <b>22, 137</b> |
| Erol v. Turkey (No. 2), No. 47796/99, judgment of 27 October 2005 .....                                     | <b>21, 147</b> |

## F

|  |                   |
|--|-------------------|
| Falakaoğlu v. Turkey, No. 77365/01, judgment of 26 April 2005.....                                       | <b>21, 145</b>    |
| Feldek v. Slovakia, No. 29032/95, judgment of 12 July 2001, Reports 2001-VIII ....                       | <b>109, 136</b>   |
| Ferragut Pallach v. Spain (decision), No. 1182/03, 3 February 2004 .....                                 | <b>117, 161</b>   |
| Filatenko v. Russia (decision), No. 73219/01, 3 June 2004.....   | <b>53, 162</b>    |
| Freie Rundfunk AG i Gr v. the Federal Republic of Germany, No. 9675/82, decision of 4 March 1987 .....   | <b>67, 150</b>    |
| Freiheitliche Landesgruppe Burgenland v. Austria (friendly settlement), No. 34320/96, 18 July 2000 ..... | <b>31, 137</b>    |
| Freiheitliche Partei Österreichs, Landesgruppe Niederösterreich v. Austria (decision), No. 65924 .....   | <b>50, 161</b>    |
| Fressoz and Roire v. France (GC), No. 29183/95, judgment of 21 January 1999, Reports 1999-I              | <b>19-20, 132</b> |
| Fuentes Bobo v. Spain, No. 39293/98, judgment of 29 February 2000.....                                   | <b>107, 134</b>   |

## G

|   |                 |
|---|-----------------|
| G.F. v. Switzerland, No. 20571/92, decision of 18 October 1995 .....            | <b>117, 153</b> |
| Garaudy v. France (decision), No. 65831/01, Reports 2003-IX .....               | <b>45, 160</b>  |
| Gaskin v. the United Kingdom, judgment of 7 July 1989, Series A No. 160 .....   | <b>75, 128</b>  |
| Gaudio v. Italy (decision), No. 43525/98, 21 February 2002 .....                | <b>47, 159</b>  |
| Gawęda v. Poland, No. 26229/95, judgment of 14 March 2002, Reports 2002-II .... | <b>8-9, 136</b> |



|  |                            |
|--|----------------------------|
| Gerger v. Turkey (GC), No. 24919/94, judgment of 8 July 1999.....                                | <b>89, 133</b>             |
| Gerger v. Turkey (No. 2) (friendly settlement), No. 42436/98, 9 March 2004 .....                 | <b>141</b>                 |
| Giniewski v. France (decision), No. 64016/00, 7 June 2005 .....                                  | <b>55, 164</b>             |
| Glaser v. the Federal Republic of Germany, judgment of 28 September 1984, Series A No. 104 ..... | <b>85, 88, 93, 127</b>     |
| Godlevskiy v. Russia (decision), No. 14888/03, 9 December 2004 .....                             | <b>54, 163</b>             |
| Gökçeli v. Turkey, Nos. 27215/95 and 36194/97, judgment of 4 March 2003 .....                    | <b>89, 139</b>             |
| Goodwin v. the United Kingdom, judgment of 27 March 1996, Reports 1996-II ..                     | <b>16-17, 31, 124, 130</b> |
| Goussev and Marenk v. Finland (decision), No. 35083/97, 20 May 2003 .....                        | <b>120, 160</b>            |
| Grauso v. Poland, No. 27388/95, decision of 9 April 1997 .....                                   | <b>71, 155</b>             |
| Grech and Montanaro v. Malta, No. 29473/95, decision of 21 January 1997 .....                    | <b>117, 155</b>            |
| Grigoriades v. Greece, judgment of 25 November 1997, Reports 1997-VII .....                      | <b>89, 131</b>             |
| Grinberg v. Russia, No. 23472/03, judgment of 21 July 2005 .....                                 | <b>39-40, 146</b>          |
| Groppera Radio AG and others v. Switzerland, judgment of 28 March 1990, Series A No. 173.        | <b>61, 128</b>             |
| Grupo Interpres SA v. Spain, No. 32849/96, decision of 7 April 1997, DR89 .....                  | <b>77, 155</b>             |
| Guerra and others v. Italy, judgment of 19 February 1998, Reports 1998-I .....                   | <b>75, 77, 131</b>         |
| Gümüs and others v. Turkey, No. 40303/98, judgment of 15 March 2005 .....                        | <b>21, 144</b>             |
| Gündem (Özgür) v. Turkey, No. 23144/93, judgment of 16 March 2000, Reports 2000-III ..           | <b>24, 134</b>             |
| Gündüz v. Turkey, No. 59745/00, judgment of 3 December 2003, Reports 2003-XI ...                 | <b>51, 93</b>              |
| Gündüz v. Turkey (decision), No. 59745/00, 13 November 2003, Reports 2003-XI ..                  | <b>51, 140, 161</b>        |
| Güneş v. Turkey, No. 53916/00, 27 September 2005 .....   | <b>21, 146</b>             |
| Güneş v. Turkey (decision), No. 53916/00, 13 May 2004 .....                                      | <b>46, 162</b>             |
| Güzel v. Turkey (No. 1) (decision), No. 54479/00, 20 September 2005 .....                        | <b>102, 165</b>            |

## H

|  |                 |
|--|-----------------|
| H.N. v. Italy, No. 18902/91, decision of 27 October 1998, DR94 .....   | <b>117, 156</b> |
| Hadjianastassiou v. Greece, judgment of 16 December 1992, Series A No. 252 .....                                   | <b>87, 129</b>  |
| Haider v. Austria, No. 25060/94, decision of 18 October 1995, DR83 .....   | <b>70, 153</b>  |
| Halis v. Turkey, No. 30007/96, judgment of 11 January 2005 .....   | <b>21, 144</b>  |
| Han v. Turkey, No. 50997/99, judgment of 13 September 2005 .....   | <b>89, 146</b>  |
| Handyside v. the United Kingdom, judgment of 7 December 1976, Series A No. 24 ..                                   | <b>85, 127</b>  |
| Harabin v. Slovakia (decision), No. 62584/00, 29 June 2004, Reports 2004-VI .....                                  | <b>102, 163</b> |
| Harlanova v. Latvia (decision), No. 57313/00, 3 April 2003 .....   | <b>49, 159</b>  |
| Hashman and Harrup v. the United Kingdom (GC), No. 25594/94, judgment of 25 November 1999, Reports 1999-VIII ..... | <b>8, 134</b>   |
| Haydar Kaya v. Turkey, No. 48387/99, judgment of 8 November 2005 .....   | <b>21, 147</b>  |



|  |                         |
|--|-------------------------|
| Hempfing v. the Federal Republic of Germany, No. 14622/89, decision of 7 March 1991, DR69<br><b>82, 151</b>  |                         |
| Herczegfalvy v. Austria, judgment of 24 September 1992, Series A No. 244 . . . . .   | <b>8, 129</b>           |
| Hertel v. Switzerland, judgment of 25 August 1998, Reports 1998-VI . . . . .   | <b>18- 19, 118, 132</b> |
| Hertel v. Switzerland (decision), No. 53440/99, judgment of 17 January 2002, Reports 2002-I.<br><b>119, 158</b>  |                         |
| Hins and Hugenholtz v. the Netherlands, No. 25987/94, decision of 7 March 1996, DR84 . . . . .   | <b>71, 154</b>          |
| Hirmann v. Austria, No. 19363/92, decision of 6 April 1995 . . . . .   | <b>117, 153</b>         |
| Hodgson, D. Woolf Productions Ltd and National Union of Journalists and Channel Four<br>Television Co. Ltd v. the United Kingdom, decision of 9 March 1987, DR51 . . . . . | <b>76, 150</b>          |
| Hogefeld v. Germany (decision), No. 35402/97, 20 January 2000 . . . . .  | <b>97, 156</b>          |
| Honsik v. Austria, No. 25062/94, decision of 18 October 1995, DR83 . . . . .   | <b>45, 153</b>          |
| Hrico v. Slovakia, No. 49418/99, judgment of 20 July 2004 . . . . .  | <b>35, 142</b>          |
| Huggett v. the United Kingdom, No. 24744/94, decision of 28 June 1995, DR82. . . . .   | <b>71, 153</b>          |
| Hurter v. Switzerland (decision), No. 53146/99, 21 February 2002 . . . . .   | <b>125, 159</b>         |

**I**

|   |                                   |
|---|-----------------------------------|
| İ.A. v. Turkey, No. 42571/98, judgment of 13 September 2005, Reports 2005-VIII . . . . .  | <b>95, 146</b>                    |
| Immler v. Germany (decision), No. 34313/96, 2 March 1999 . . . . .  | <b>117, 156</b>                   |
| Imrek v. Turkey (decision), No. 57175/00, 23 June 2005 . . . . .  | <b>96, 164</b>                    |
| Incal v. Turkey, judgment of 9 June 1998, Reports 1998-IV . . . . .   | <b>89, 131</b>                    |
| Independent News and Media and Independent Newspapers Ireland Limited v. Ireland, No.<br>55120/00, judgment of 16 June 2005, Reports 2005-V . . . . . | <b>38- 39, 146</b>                |
| Informationsverein Lentia and others v. Austria, judgment of 24 November 1993, Series A No.<br>276 . . . . .  | <b>8, 62- 63, 65, 71- 73, 129</b> |
| Informationsverein Lentia v. Austria (No. 2) (friendly settlement), No. 37093/97, 28 November<br>2002 . . . . .                                       | <b>65- 66, 138</b>                |
| Ivanciuc v. Romania (decision), No. 18624/03, 8 September 2005. . . . .   | <b>56, 165</b>                    |

**J**

|   |                      |
|---|----------------------|
| Jääskeläinen and others v. Finland (decision), No. 32051/96, 4 May 2000 . . . . .           | <b>118, 157</b>      |
| Jacobowski v. Germany, judgment of 23 June 1994, Series A No. 291-A. . . . .                | <b>80, 130</b>       |
| Janowski v. Poland (GC), No. 25716/94, judgment of 21 January 1999, Reports 1999-I. . . . . | <b>40, 106, 132</b>  |
| Jersild v. Denmark, judgment of 23 September 1994, Series A No. 298. . . . .                | <b>15, 45, 130</b>   |
| Jerusalem v. Austria, No. 26958/95, judgment of 27 February 2001, Reports 2001-II. . . . .  | <b>108- 109, 135</b> |
| Jones v. the United Kingdom (decision), No. 42639/04, 13 September 2005 . . . . .           | <b>78, 165</b>       |



## K

- K v. the Federal Republic of Germany, No. 17006/90, decision of 2 July 1991 ..... **82, 151**
- Kalin v. Turkey, No. 31236/96, judgment of 10 November 2004..... **21, 143**
- Kaptan v. Switzerland (decision), No. 55641/00, 12 April 2001..... **99, 158**
- Karademirci and others v. Turkey, Nos. 37096/97 and 37101/97, judgment of 25 January 2005, Reports 2005-I ..... **9, 144**
- Karakoç and others v. Turkey, Nos. 27692/95, 28138/95 and 28498/95, 15 October 2002 . **21, 138**
- Karakoç v. Turkey (decision), No. 53919/00, 22 March 2005 ..... **46, 164**
- Karataş v. Turkey (GC), No. 23168/94, judgment of 8 July 1999, Reports 1999-IV .... **89, 133**
- Karataş (Seher) v. Turkey, No. 33179/96, 9 July 2002 ..... **21, 137**
- Karhuvaara and Iltalehti v. Finland, No. 53678/00, judgment of 16 November 2004, Reports 2004-X..... **35, 143**
- Karkin v. Turkey, No. 43928/98, judgment of 23 September 2003..... **89, 139**
- Keskin (Emire Eren) v. Turkey, No. 49564/99, judgment of 22 November 2005 ..... **89, 147**
- Kiliç v. Turkey (decision), No. 40498/98, 8 July 2003 ..... **101, 160**
- Kiliç (Özcan) v. Turkey (friendly settlement), Nos. 27209/95 and 27211/95, judgment of 26 November 2002 ..... **22, 138**
- Kilinc v. Turkey (decision), No. 48083/99, 27 April 2004 ..... **101, 161**
- Kızılyaprak v. Turkey, No. 27528/95, judgment of 2 October 2003 ..... **89, 140**
- Klein v. Slovakia (decision), No. 72208/01, 8 November 2005..... **58, 166**
- Kobenter and Standard Verlag GmbH v. Austria (decision), No. 60899/00, 1 February 2005... **54, 163**
- Korkmaz v. Turkey (No. 1), No. 40987/98, judgment of 20 December 2005..... **21, 148**
- Korkmaz v. Turkey (No. 2), No. 42589/98, judgment of 20 December 2005..... **21, 148**
- Korkmaz v. Turkey (No. 3), No. 42590/98, judgment of 20 December 2005..... **21, 148**
- Kosiek v. the Federal Republic of Germany, judgment of 28 September 1984, Series A No. 105 **85, 88, 93, 128**
- Krasulya v. Russia (decision), No. 12365/03, 9 December 2004 ..... **54, 163**
- Krone Verlag GmbH und Co. KG and Mediaprint Zeitungs- und Zeitschriftenverlag GmbH und Co. KG v. Austria (decision), No. 42429/98, 20 March 2003..... **84, 159**
- Krone Verlag GmbH und Co. KG v. Austria, No. 34315/96, judgment of 26 February 2002. **29-30, 136**
- Krone Verlag GmbH und Co. KG v. Austria (decision), No. 72331/01, 22 September 2005 . **57, 165**
- Krone Verlag GmbH und Co. KG v. Austria (No. 2), No. 40284/98, judgment of 6 November 2003 **33, 140**
- Krone Verlag GmbH und Co. KG v. Austria (No. 3), No. 39069/97, judgment of 11 December 2003, Reports ..... **81, 140**
- Krone Verlag GmbH und Walter v. Austria (decision), No. 36961/02, 13 May 2004... **52, 162**
- Krutil v. Germany (decision), No. 71750/01, 20 March 2003. .... **48, 159**



|   |                 |
|---|-----------------|
| Kubli v. Switzerland (decision), No. 50364/99, 21 February 2002 .....   | <b>117, 159</b> |
| Kurier Zeitungsverlag und Druckerei GmbH v. Austria (decision), No. 48481/99, 20 March 2001<br><b>47, 157</b> |                 |
| Kürkücü v. Turkey, No. 43996/98, judgment of 27 July 2004 .....   | <b>89, 142</b>  |
| Kyprianou v. Cyprus (GC), No. 73797/01, judgment of 15 December 2005, Reports 2005-XIII..<br><b>123, 148</b>  |                 |

## L

|  |                 |
|--|-----------------|
| Leander v. Sweden, judgment of 26 March 1987, Series A No. 116 .....   | <b>75, 128</b>  |
| Lehideux and Isorni v. France, judgment of 23 September 1998, Reports 1998-VII. . .  | <b>19, 132</b>  |
| Leiningen-Westerburg v. Austria, No. 26601/95, decision of 20 January 1997, DR88   | <b>117, 155</b> |
| Lešník v. Slovakia, No. 35640/97, 11 March 2003, Reports 2003-IV .....   | <b>111, 139</b> |
| Lévêque v. France (decision), No. 35591/97, 23 November 1999 .....   | <b>72, 156</b>  |
| Liljenberg v. Sweden, No. 9664/82, decision of 1 March 1983 .....  | <b>82, 149</b>  |
| Lindner v. Germany (decision), No. 32813/96, 9 March 1999 .....  | <b>83, 156</b>  |
| Lingens v. Austria, judgment of 8 July 1986, Series A No. 103 .....  | <b>12, 127</b>  |
| Loersch and Nouvelle association du Courrier v. Switzerland, Nos. 23868/94 and 23869/94,<br>decision of 24 February 1995, DR80 ..... | <b>76, 152</b>  |
| Lomakin v. Russia (decision), No. 11932/03, 17 November 2005 .....   | <b>59, 167</b>  |
| Lopes Gomes da Silva v. Portugal, No. 37698/97, judgment of 28 September 2000, Reports<br>2000-X .....                               | <b>26, 135</b>  |
| López-Fando Raynaud and Pardo Unanua v. Spain, No. 31477/96, decision of 15 January 1997<br><b>117, 154</b>                          |                 |
| Lucas v. the United Kingdom (decision), No. 39013/02, 18 March 2003 .....  | <b>100, 159</b> |
| Lunde v. Norway (decision), No. 38318/97, 13 February 2001 .....   | <b>117, 157</b> |

## M

|   |                   |
|---|-------------------|
| M v. the United Kingdom, No. 4750/71, decision of 20 March 1972, Reports 40 .....                                     | <b>69, 149</b>    |
| M.N. v. Spain, No. 18353/91, decision of 6 July 1993 .....  | <b>69, 152</b>    |
| Mahler v. Germany, No. 29045/95, decision of 14 January 1998 .....  | <b>117, 155</b>   |
| Malisiewicz-Gsior v. Poland (decision), No. 43797/98, 29 January 2004 .....   | <b>51, 161</b>    |
| Marais v. France, No. 31159/96, decision of 24 June 1996, DR86 .....  | <b>45, 154</b>    |
| Maraşlı v. Turkey, No. 40077/98, judgment of 9 November 2004 .....  | <b>21, 142</b>    |
| Markt Intern Verlag GmbH and Klaus Beermann v. the Federal Republic of Germany, judgment<br>of 20 November 1989 ..... | <b>79-80, 128</b> |
| Marlow v. the United Kingdom (decision), No. 42015/98, 5 December 2000 .....  | <b>98, 157</b>    |
| Maroglou v. Greece (decision), No. 19846/02, 23 October 2003 .....  | <b>51, 161</b>    |
| Marònek v. Slovakia, No. 32686/96, judgment of 19 April 2001, Reports 2001-III ..                                     | <b>109, 135</b>   |



McBride v. the United Kingdom (decision), No. 27786/95, 5 July 2001 ..... **99, 158**

McGuinness v. the United Kingdom (decision), No. 39511/98, 8 June 1999, Reports 1999-V ..  
**97, 156**

McLaughlin v. the United Kingdom, No. 18759/91, decision of 9 May 1994 ..... **70, 152**

McVicar v. the United Kingdom, No. 46311/99, judgment of 5 May 2002, Reports 2002-III **30,**  
**113, 137**

Melnychuk v. Ukraine (decision), No. 28743/03, 5 July 2005 ..... **56, 164**

Metzger v. Germany (decision), No. 56720/00, 17 November 2005 ..... **121, 167**

Middelburg, Van der Zee and Het Parool BV v. the Netherlands, No. 28202/95, decision of 21  
October 1998 ..... **45, 117, 156**

Müller and others v. Switzerland, judgment of 24 May 1988, Series A No. 133..... **86, 128**

Murphy v. Ireland, No. 44179/98, judgment of 10 July 2003, Reports 2003-IX ... **66, 93, 139**

**N**

Nachtmann v. Austria, No. 36773/97, decision of 9 September 1998. .... **45, 156**

Nationaldemokratische Partei Deutschlands (NPD), Bezirksverband München-Oberbayern v.  
Germany, No. 25992/94, DR84 ..... **45, 153**

Nederlandse Omroepprogramma Stichting v. the Netherlands, No. 13920/88, decision of 11  
July 1991, DR71 ..... **68, 151**

Nederlandse Omroepprogramma Stichting v. the Netherlands, No. 16844/90, decision of 13  
October 1993 ..... **69, 83, 152**

Neves v. Portugal, No. 20683/92, decision of 20 February 1995..... **45, 152**

News Verlags GmbH und Co. KG v. Austria, No. 31457/96, judgment of 11 January 2000,  
Reports 2000-I ..... **23-24, 134**

Nicol and Selvanayagam v. the United Kingdom (decision), No. 32213/96, 11 January 2001..  
**99, 157**

Nikula v. Finland, No. 31611/96, judgment of 21 March 2002, Reports 2002-II. .... **110, 137**

Nilsen and Johnsen v. Norway (GC), No. 23118/93, judgment of 25 November 1999, Reports  
1999-VIII ..... **106, 134**

Nordisk Film & TV A/S v. Denmark (decision), No. 40485/02, 8 December 2005 ..... **60, 167**

Norwood v. the United Kingdom, No. 23131/03, 16 November 2004, Reports 2004-XI ... **45,**  
**163**

Nurminen and others v. Finland, No. 27881/95, decision of 26 February 1997..... **77, 155**

Nydahl v. Sweden, No. 17505/90, decision of 11 January 1993 ..... **69, 151**

**O**

Oberschlick v. Austria (No. 1), judgment of 23 May 1991, Series A No. 204 ..... **13, 128**

Oberschlick v. Austria (No. 2), judgment of 1 July 1997, Reports 1997-IV..... **17-18, 131**



|  |                         |
|--|-------------------------|
| The Observer and Guardian Newspapers Ltd v. the United Kingdom, judgment of 26 November 1991, Series A No. 216 .....       | <b>13, 44, 103, 128</b> |
| Obukhova v. Russia (decision), No. 34736/03, 1 December 2005 .....   | <b>59, 167</b>          |
| Odaba and Koçak v. Turkey (decision), No. 50959/99, 10 February 2004 .....   | <b>120, 161</b>         |
| Odaba v. Turkey, No. 41618/98, judgment of 10 November 2004 .....  | <b>89, 143</b>          |
| Okçuoğlu v. Turkey (GC), No. 24246/94, judgment of 8 July 1999 .....   | <b>21, 133</b>          |
| Okutan v. Turkey, No. 43995/98, judgment of 29 July 2004 .....   | <b>89, 142</b>          |
| Öllinger v. Austria (decision), No. 74245/01, 13 May 2004 .....  | <b>120, 162</b>         |
| Open Door Counselling Ltd and Dublin Well Woman Centre Ltd v. Ireland, judgment of 29 October 1992, Series A No. 246 ..... | <b>86- 87, 129</b>      |
| Österreichischer Rundfunk v. Austria (decision), No. 57597/00, 25 May 2004 .....   | <b>53, 162</b>          |
| Otto v. Germany (decision), No. 27574/02, 24 November 2005 .....   | <b>104, 167</b>         |
| Otto-Preminger-Institut v. Austria, judgment of 20 September 1994, Series A No. 295-A .                                    | <b>87, 130</b>          |
| Özçelik (Osman) and others v. Turkey, No. 55391/00, judgment of 20 October 2005 .  | <b>89, 147</b>          |
| Özkaya v. Turkey, No. 42119/98, judgment of 30 November 2004 .....   | <b>89, 143</b>          |
| Özler v. Turkey (friendly settlement), No. 25753/94, judgment of 11 July 2002 .....  | <b>89, 137</b>          |
| Öztürk v. Turkey (GC), No. 22479/93, judgment of 28 September 1999, Reports 1999-VI..                                      | <b>23, 133</b>          |
| Öztürk (Ayse) v. Turkey, No. 24914/94, judgment of 15 October 2002 .....   | <b>21, 138</b>          |
| Öztürk (Ünsal) v. Turkey, No. 29365/95, judgment of 4 October 2005 .....   | <b>9, 146</b>           |

## P

|  |                    |
|--|--------------------|
| P4 Radio Hele Norge ASA v. Norway (decision), No. 76682/01, judgment of 6 May 2003, Reports 2003-VI .....  | <b>74, 160</b>     |
| Pakdemirli v. Turkey, No. 35839/97, judgment of 22 February 2005 .....                                     | <b>115, 144</b>    |
| Pamak v. Turkey, No. 39708/98, judgment of 7 June 2005 .....   | <b>21, 145</b>     |
| Panev v. Bulgaria, No. 35125/97, decision of 3 December 1997 .....   | <b>45, 155</b>     |
| Pasalaris and Press Foundation SA v. Greece (decision), No. 60916/00, 4 July 2002                          | <b>117, 159</b>    |
| Paturel v. France, No. 54968/00, judgment of 22 December 2005 .....  | <b>117, 148</b>    |
| Pedersen and Baadsgaard v. Denmark (GC), No. 49017/99, judgment of 17 December 2004, Reports 2004-XI ..... | <b>36, 143</b>     |
| Peree v. the Netherlands (decision), No. 34328/96, 17 November 1998 .....                                  | <b>117, 156</b>    |
| Perinçek v. Turkey, No. 46669/99, judgment of 21 June 2005 .....   | <b>89, 146</b>     |
| Perna v. Italy (GC), No. 48898/99, judgment of 6 May 2003, Reports 2003-V .....                            | <b>32- 33, 139</b> |
| Perrin v. the United Kingdom (decision), No. 5446/03, 18 October 2005 .....                                | <b>103, 166</b>    |
| Petersen v. Germany (decision), No. 39793/98, 22 November 2001, Reports 2001-XII...                        | <b>100, 158</b>    |
| Piermont v. France, judgment of 27 April 1995, Series A No. 314 .....                                      | <b>87- 88, 130</b> |
| Pitkevich v. Russia (decision), No. 47936/99, 8 February 2001 .....  | <b>125, 157</b>    |



|  |                 |
|--|-----------------|
| Plon v. France, No. 58148/00, judgment of 18 May 2004, Reports 2004-IV .....         | <b>112, 141</b> |
| Polat v. Turkey (GC), No. 23500/94, judgment of 8 July 1999 .....                    | <b>89, 133</b>  |
| Porubova v. Russia (decision), No. 8237/03, 9 December 2004 .....                    | <b>54, 163</b>  |
| Prager and Oberschlick v. Austria, judgment of 26 April 1995, Series A No. 313 ..... | <b>16, 130</b>  |
| Predota v. Austria (decision), No. 28962/95, 18 January 2000.....                    | <b>118, 156</b> |
| Purcell and others v. Ireland, No. 15404/89, decision of 16 April 1991, DR70 .....   | <b>43, 151</b>  |
| Purmonen and others v. Finland (decision), No. 36404/97, 20 May 2003 .....           | <b>119, 160</b> |
| Puzinas v. Lithuania (decision), No. 63767/00, 13 December 2005 .....                | <b>104, 167</b> |

## R

|   |                    |
|---|--------------------|
| Radio 24 AG, S., W. and A. v. Switzerland, No. 10799/84, decision of 17 May 1984, DR37 ..   | <b>67, 71, 150</b> |
| Radio ABC v. Austria, judgment of 20 October 1997, Reports 1997-VI .....                    | <b>64, 131</b>     |
| Radio France and others v. France, No. 53984/00, judgment of 30 March 2004, Reports 2004-II | <b>34, 141</b>     |
| Radio Twist, a.s. v. Slovakia (decision), No. 62202/00, 8 November 2005 .....               | <b>58, 166</b>     |
| Raichinov v. Bulgaria (decision), No. 47579/99, 1 February 2005.....                        | <b>121, 164</b>    |
| Rainys and Gasparavius v. Lithuania, Nos. 70665/01 and 74345/01, judgment of 7 April 2005   | <b>94, 145</b>     |
| Rebhandl v. Austria, No. 24398/94, decision of 16 January 1996.....                         | <b>45, 153</b>     |
| Rekvényi v. Hungary (GC), No. 25390/94, judgment of 20 May 1999, Reports 1999-III           | <b>90-91, 132</b>  |
| Remer v. Germany, No. 25096/94, decision of 6 September 1995, DR82 .....                    | <b>45, 153</b>     |
| Riza Dinç v. Turkey, No. 42437/98, judgment of 28 October 2004.....                         | <b>94, 142</b>     |
| Rizos and Daskas v. Greece, No. 65545/01, judgment of 27 May 2004 .....                     | <b>34, 141</b>     |
| Roche v. the United Kingdom (GC), No. 32555/96, judgment of 19 October 2005, Reports        | 2005-X.....        |
|   | <b>76, 147</b>     |
| Röda Korsets Ungdomsförbund and others v. Sweden, No. 18424/91, decision of 15 January      | 1993 .....         |
|   | <b>69, 151</b>     |
| Roemen and Schmit v. Luxembourg, No. 51772/99, judgment of 25 February 2003, Reports        | 2003-IV .....      |
|   | <b>32, 139</b>     |
| Romanenko and others v. Russia (decision), No. 11751/03, 17 November 2005 .....             | <b>59, 167</b>     |
| Rommelfanger v. the Federal Republic of Germany, No. 12242/86, decision of 6 September      | 1989, DR .....     |
|   | <b>95, 150</b>     |
| Gemeinde Rothenurm v. Switzerland, No. 13252/87, decision of 14 December 1988, DR59 ..      | <b>68, 150</b>     |

## S

|  |                |
|--|----------------|
| Sabou and Pircalab v. Romania, No. 46572/99, judgment of 28 September 2004.... | <b>35, 142</b> |
|--|----------------|



|   |                    |
|---|--------------------|
| Sacchi v. Italy (Telebiella), No. 6452/74, decision of 12 March 1976, DR5 .....   | <b>61, 66, 149</b> |
| Saday v. Turkey (decision), No. 32458/96, 10 April 2003 .....   | <b>125, 160</b>    |
| Sadık (Ahmet) v. Greece, judgment of 15 November 1996, Reports 1996-V .....   | <b>96, 130</b>     |
| Sahin (Fikret) v. Turkey, No. 42605/98, judgment of 6 December 2005 .....   | <b>89, 148</b>     |
| Salov v. Ukraine, No. 65518/01, judgment of 6 September 2005, Reports 2005-VIII ...   | <b>94-95, 146</b>  |
| Saszmann v. Austria, No. 23697/94, decision of 27 February 1997 .....   | <b>16, 155</b>     |
| Savitchi v. Moldova, No. 11039/02, judgment of 11 October 2005 .....  | <b>40, 147</b>     |
| Sc. X and Association Z v. the United Kingdom, No. 4515/70, decision of 12 July 1971, Yearbook 14.....                          | <b>71, 149</b>     |
| Scharsach and News Verlagsgesellschaft v. Austria, No. 39394/98, judgment of 13 November 2003, Reports 2003-XI .....            | <b>33-34, 140</b>  |
| Schimanek v. Austria (decision), No. 32307/96, 1 February 2000 .....  | <b>45, 156</b>     |
| Schindewolf v. the Federal Republic of Germany, No. 17713/91, decision of 2 September 1991                                      | <b>71, 151</b>     |
| Schöpfer v. Switzerland, judgment of 20 May 1998, Reports 1998-III .....  | <b>122, 131</b>    |
| Schwabe v. Austria, judgment of 28 August 1992, Series A No. 242-B .....  | <b>14-15, 129</b>  |
| Schwartz v. Luxembourg, No. 25183/94, decision of 12 April 1996 .....   | <b>71, 154</b>     |
| Schweizerische Radio- und Fernsehgesellschaft (SRG) v. Switzerland (decision), No. 43524/98, 12 April 20 .....                  | <b>119, 158</b>    |
| Segerstedt-Wiberg and others v. Sweden (decision), No. 62332/00, 20 September 2005. .   | <b>78, 165</b>     |
| Selistö v. Finland, No. 56767/00, judgment of 16 November 2004 .....  | <b>36, 143</b>     |
| Sener v. Turkey, No. 26680/95, judgment of 18 July 2000 .....   | <b>21, 135</b>     |
| Seurot v. France (decision), No. 57383/00, 18 May 2004 .....  | <b>45, 162</b>     |
| Shamsa v. Poland (decision), No. 40673/98, 10 January 2002 .....  | <b>77, 158</b>     |
| Shamsa v. Poland (decision), No. 42649/98, 10 January 2002 .....  | <b>77, 158</b>     |
| Sidabras and Džiautas v. Lithuania, Nos. 55480/00 and 59330/00, judgment of 27 July 2004, Reports 200 .....                     | <b>93-94, 142</b>  |
| Sirbu and others v. Moldova, Nos. 73562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, judgment of 15 June 2004 ..... | <b>78, 162</b>     |
| Skalka v. Poland, No. 43425/98, judgment of 27 May 2003 .....   | <b>123, 139</b>    |
| Skyradio AG and others v. Switzerland (decision), No. 46841/99, 27 September 2001   | <b>74, 158</b>     |
| Société nationale de programmes France 2 v. France, No. 30262/96, decision of 15 January 1997 .....                             | <b>70, 154</b>     |
| Société Prisma Presse v. France (decision), No. 66910/01, 1 July 2003 .....   | <b>50, 160</b>     |
| Société Prisma Presse v. France (decision), No. 71612/01, 1 July 2003 .....   | <b>50, 160</b>     |
| Sokołowski v. Poland, No. 75955/01, judgment of 29 March 2005 .....   | <b>116, 145</b>    |
| Stambuk v. Germany, No. 37928/97, judgment of 17 October 2002 .....   | <b>80-81, 138</b>  |
| Stângu and Scutelnicu v. Romania (decision), No. 53899/00, 12 October 2004 .....  | <b>54, 163</b>     |
| Stângu v. Romania (decision), No. 57551/00, 9 November 2004 .....   | <b>54, 163</b>     |



|  |                        |
|--|------------------------|
| Steel and Morris v. the United Kingdom, No. 68416/01, judgment of 15 February 2005, Reports 2005-II .....          | <b>114, 144</b>        |
| Steel and others v. the United Kingdom, judgment of 23 September 1998, Reports 1998-VII .                          | <b>90, 132</b>         |
| Štefanec v. the Czech Republic (decision), No. 75615/01, 25 August 2005 .....                                      | <b>165</b>             |
| Steur v. the Netherlands, No. 39657/98, judgment of 28 October 2003, Reports 2003-XI                               | <b>111, 140</b>        |
| Stoll v. Switzerland (decision), No. 69698/01, 3 May 2005 .....  | <b>55, 164</b>         |
| Sunday Times v. the United Kingdom (No. 1), judgment of 26 April 1979, Series A No. 30                             | <b>11, 85, 127</b>     |
| Sunday Times v. the United Kingdom (No. 2), judgment of 26 November 1991, Series A No. 217                         | <b>13- 14, 44, 129</b> |
| Sundberg v. Sweden, No. 12439/86, decision of 15 October 1987 .....  | <b>70, 150</b>         |
| Sürek and Özdemir v. Turkey (GC), Nos. 23927/94 and 24277/94, judgment of 8 July 1999 ...                          | <b>21, 133</b>         |
| Sürek v. Turkey (No. 1) (GC), No. 26682/95, judgment of 8 July 1999, Reports 1999-IV ....                          | <b>22, 133</b>         |
| Sürek v. Turkey (No. 2) (GC), No. 24122/94, judgment of 8 July 1999 .....  | <b>22, 133</b>         |
| Sürek v. Turkey (No. 3) (GC), No. 24735/94, judgment of 8 July 1999 .....  | <b>22, 133</b>         |
| Sürek v. Turkey (No. 4) (GC), No. 24762/94, judgment of 8 July 1999 .....  | <b>21, 133</b>         |
| Sürek v. Turkey (No. 5) (friendly settlement), Nos. 26976/95, 28305/95 and 28307/95, judgment of 16 July 2002..... | <b>22, 137</b>         |
| Sürek (Kamil T.) v. Turkey (friendly settlement), No. 34686/97, judgment of 14 June 2001                           | <b>22, 136</b>         |

## T

|   |                    |
|---|--------------------|
| Tammer v. Estonia, No. 41205/98, judgment of 6 February 2001, Reports 2001-I                              | <b>27- 28, 135</b> |
| Taniyan v. Turkey (friendly settlement), No. 29910/96, judgment of 17 March 2005 .                        | <b>22, 144</b>     |
| Tele 1 Privatfernsehgesellschaft mbH v. Austria, No. 32240/96, judgment of 21 September 2000.....         | <b>63- 64, 135</b> |
| Telesystem Tyrol Kabeltelevision v. Austria, judgment of 9 June 1997, Reports 1997-III. ...               | <b>63, 131</b>     |
| Temirkan v. Turkey (decision), No. 41990/98, 19 September 2002 .....                                      | <b>46, 159</b>     |
| Teslim Töre v. Turkey, No. 50744/99, judgment of 19 May 2005.....   | <b>21, 145</b>     |
| Thoma v. Luxembourg, No. 38432/97, judgment of 29 March 2001, Reports 2001-III                            | <b>28, 135</b>     |
| Thorgeir Thorgeirson v. Islande, judgment of 25 June 1992, Series A No. 239 .....                         | <b>14, 129</b>     |
| Tig v. Turkey (decision), No. 8165/03, 24 May 2005.....   | <b>102, 164</b>    |
| Times Newspapers Ltd and A. Neil v. the United Kingdom, No. 14644/89, Report of 8 October 1991, DR73..... | <b>44, 151</b>     |
| Times Newspapers Ltd and A. Neil v. the United Kingdom, No. 18897/91, decision of 12 October 1992 .....   | <b>44, 151</b>     |



|  |                 |
|--|-----------------|
| Times Newspapers Ltd v. the United Kingdom (decision), Nos. 23676/03 and 3002/03, 11 October 2005 .....            | <b>58, 166</b>  |
| Tolstoy Miloslavsky v. the United Kingdom, judgment of 13 July 1995, Series A No. 316-B 16, <b>38-39, 115, 130</b> |                 |
| Tosun v. Turkey (decision), No. 4124/02, 13 September 2005 .....   | <b>46, 165</b>  |
| Tourancheau and July v. France, No. 53886/00, judgment of 24 November 2005 ....                                    | <b>41, 147</b>  |
| Trieflinger v. Germany, No. 25063/94, decision of 6 September 1995 .....   | <b>117, 153</b> |
| Turhan v. Turkey, No. 48176/99, judgment of 19 May 2005 .....  | <b>116, 145</b> |
| Turhan (Veysel) v. Turkey, No. 53648/00, judgment of 20 September 2005 .....                                       | <b>89, 146</b>  |
| Tüzel v. Turkey (decision), No. 57225/00, 10 May 2005 .....  | <b>96, 164</b>  |
| Tüzel (Abdullah Levent) v. Turkey (decision), No. 71459/01, 4 October 2005 .....                                   | <b>103, 166</b> |

## U

|  |                |
|--|----------------|
| Ukrainian Media Group v. Ukraine, No. 72713/01, judgment of 29 March 2005 .....  | <b>38, 145</b> |
| Unabhängige Initiative Informationsvielfalt v. Austria, No. 28525/95, judgment of 26 February 2002, Reports 2002-I ..... | <b>29, 136</b> |
| United Christian Broadcasters Ltd v. the United Kingdom (decision), No. 44802/98, 7 November 2000 .....                  | <b>73, 157</b> |
| Urbino Rodrigues v. Portugal, No. 75088/01, judgment of 29 November 2005 .....   | <b>42, 148</b> |

## V

|  |                   |
|--|-------------------|
| Van Den Dungen v. the Netherlands, No. 22838/93, decision of 22 February 1995, DR80  | <b>117, 152</b>   |
| Van Der Auwera v. Belgium, No. 30401/96, decision of 21 May 1997 .....   | <b>71, 155</b>    |
| Varlı and others v. Turkey, No. 38586/97, judgment of 19 October 2004 .....  | <b>89, 142</b>    |
| Varlı and others v. Turkey (decision), No. 57299/00, 18 March 2004 .....   | <b>46, 161</b>    |
| Verdens Gang and Aase v. Norway (decision), No. 45710/99, 16 October 2001, Reports 2001-X  | <b>47, 158</b>    |
| Verein Alternatives Lokalradio Bern and Verein Radio Dreyeckland Basel v. Switzerland, No. 10746/84, decision of 16 October 1986 ..... | <b>68, 150</b>    |
| Vereinigung Bildender Künstler v. Austria (decision), No. 68354/01, 30 June 2005 .   | <b>121, 164</b>   |
| Vereinigung Demokratischer Soldaten Österreichs and Gubi v. Austria, judgment of 19 December 1994, Series A No. 302 .....              | <b>15-16, 130</b> |
| Vereniging Radio 100 and others v. the Netherlands, No. 26335/95, decision of 27 June 1996   | <b>68, 154</b>    |
| Vereniging Weekblad Bluf! v. the Netherlands, judgment of 9 February 1995, Series A No. 306-A .....                                    | <b>15-16, 130</b> |
| Vérités santé pratique Sarl v. France (decision), No. 74766/01, 1 December 2005 ....   | <b>59, 167</b>    |
| Verlagsgruppe News GmbH v. Austria (decision), No. 10520/02, 8 September 2005 .  | <b>56, 165</b>    |



|  |                         |
|--|-------------------------|
| Verlagsgruppe News GmbH v. Austria (decision), No. 76918/01, 8 September 2005 . . . . .                            | <b>56, 165</b>          |
| Vgt Verein gegen Tierfabriken v. Switzerland, No. 24699/94, judgment of 28 June 2001,<br>Reports 2001-VI . . . . . | <b>64-65, 136</b>       |
| Vides Aizsardzibas Klubs v. Lettonie, No. 57829/00, judgment of 27 May 2004 . . . . .                              | <b>112, 141</b>         |
| Vogt v. Germany, judgment of 26 September 1995, Series A No. 323 . . . . .   | <b>88, 93, 124, 130</b> |
| Volkmer v. Germany (decision), No. 39799/98, 22 November 2001 . . . . .  | <b>100, 158</b>         |

## W

|   |                     |
|---|---------------------|
| W and K v. Switzerland, No. 16564/90, decision of 8 April 1991 . . . . .  | <b>96, 151</b>      |
| Wabl v. Austria, No. 24773/94, judgment of 21 March 2000 . . . . .  | <b>107-108, 134</b> |
| Walendy v. Germany, No. 21128/92, decision of 11 January 1995, DR80 . . . . .   | <b>45, 152</b>      |
| Weber v. Switzerland, judgment of 22 May 1990, Series A No. 177 . . . . .   | <b>13, 128</b>      |
| Weigt v. Poland (decision), No. 74232/01, 11 October 2005 . . . . .   | <b>57, 166</b>      |
| Wieszczek and Stowarzyszenie Mieszkańców Domów v. Poland (decision), No. 44320/02, 11<br>October 2005 . . . . .                         | <b>57, 166</b>      |
| Wille v. Liechtenstein (GC), No. 28396/95, judgment of 28 October 1999, Reports 1999-VII . . .<br><b>91, 134</b>                        |                     |
| Wingerter v. Germany (decision), No. 43718/98, 21 March 2002 . . . . .  | <b>119, 159</b>     |
| Wingrove v. the United Kingdom, judgment of 25 November 1996, Reports 1996-V . . . . .  | <b>105, 131</b>     |
| Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria, No. 26113/95, Report of 16 April<br>1998 . . . . .                             | <b>45, 155</b>      |
| Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria, No. 58547/00, judgment of 27<br>October 2005 . . . . .                         | <b>40, 147</b>      |
| Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria (No. 2) (decision), No. 62746/00, 14<br>November 2002, Reports 2002-X . . . . . | <b>48, 159</b>      |
| Wirtschafts-Trend Zeitschriften-Verlags GmbH v. Austria (No. 3), Nos. 66298/01 and 15653/02,<br>judgment of 13 December 2005 . . . . .  | <b>43, 148</b>      |
| Witzsch v. Germany (decision), No. 41448/98, 20 April 1999 . . . . .  | <b>45, 156</b>      |
| Witzsch v. Germany (decision), No. 7485/03, 13 December 2005 . . . . .  | <b>45, 167</b>      |
| Worm v. Austria, judgment of 29 August 1997, Reports 1997-V . . . . .   | <b>9, 18, 131</b>   |

## X

|  |                    |
|--|--------------------|
| X and Church of Scientology v. Sweden, No. 7805/77, decision of 5 May 1979, DR16 . . . . . | <b>82, 149</b>     |
| X and others v. Belgium (Radio Scorpio), No. 10405/83, decision of 5 March 1986 . . . . .  | <b>67, 150</b>     |
| X and Y v. Belgium, No. 8962/80, decision of 13 May 1982, DR28 . . . . .                   | <b>69, 149</b>     |
| X SA v. the Netherlands, No. 21472/93, decision of 11 January 1994, DR76 . . . . .         | <b>61, 69, 152</b> |
| X v. Sweden, No. 3071/67, decision of 7 February 1968, Reports 26 . . . . .                | <b>66, 149</b>     |



X v. the United Kingdom (Radio Caroline), No. 8266/78, decision of 4 December 1978, DR16 .  
**67, 149**

## Y

|   |                |
|---|----------------|
| Yalçın Küçük v. Turkey, No. 28493/95, judgment of 5 December 2002 .....                             | <b>89, 138</b> |
| Yalçın Küçük v. Turkey (No. 2) (decision), No. 56004/00, 21 October 2004 .....                      | <b>96, 163</b> |
| Yamurdereli v. Turkey, No. 29590/96, judgment of 4 June 2002.....                                   | <b>89, 137</b> |
| Yankov v. Bulgaria, No. 39084/97, judgment of 11 December 2003, Reports 2003-XII...<br><b>141</b>   | <b>112,</b>    |
| Yazar v. Turkey, No. 42713/98, judgment of 23 September 2004 .....                                  | <b>89, 142</b> |
| Yeilgöz and Firik v. Turkey (decision), Nos. 58459/00 and 62224/00, 17 June 2004 ....<br><b>163</b> | <b>18, 96,</b> |
| Yıldırım and others v. Turkey, No. 42920/98, judgment of 15 July 2004 .....                         | <b>89, 142</b> |
| Yıldız and others v. Turkey (decision), No. 60608/00, 26 April 2005.....                            | <b>46, 164</b> |
| Yılmaz (Sevgi) v. Turkey (decision), No. 62230/00, 20 September 2005 .....                          | <b>89, 165</b> |
| Yüksel v. Turkey, No. 56362/00, judgment of 25 October 2005.....                                    | <b>89, 147</b> |
| Yurttas v. Turkey, Nos. 25143/94 and 27098/95, judgment of 27 May 2004.....                         | <b>89, 141</b> |

## Z

|   |                 |
|---|-----------------|
| Zakharov v. Russia (decision), No. 14881/03, 9 December 2004.....   | <b>121, 163</b> |
| Zana and others v. Turkey (friendly settlement), Nos. 51002/99 and 51489/99, judgment of 11<br>January 2005.....    | <b>22, 144</b>  |
| Zana v. Turkey, judgment of 25 November 1997, Reports 1997-VII.....   | <b>89, 131</b>  |
| Zana v. Turkey (decision), No. 29851/96, 19 September 2000.....   | <b>97, 157</b>  |
| Zana (Mehdi) v. Turkey (No. 2), No. 26982/95, judgment of 6 April 2004 .....  | <b>89, 141</b>  |
| Zaoui v. Switzerland (decision), No. 41615/98, 18 January 2001 .....  | <b>99, 157</b>  |
| Zarakolu and Belge Uluslararası Yayıncılık v. Turkey, Nos. 26971/95 and 37933/97, judgment<br>of 13 July 2004 ..... | <b>89, 142</b>  |
| Zarakolu v. Turkey (friendly settlement), No. 32455/96, judgment of 27 May 2003 ..                                  | <b>22, 139</b>  |
| Zarakolu v. Turkey (No. 1) (friendly settlement), No. 37059/97, judgment of 2 October 2003..<br><b>22, 140</b>      |                 |
| Zarakolu v. Turkey (No. 2) (friendly settlement), No. 37061/97, judgment of 2 October 2003..<br><b>22, 140</b>      |                 |
| Zarakolu v. Turkey (No. 3) (friendly settlement), No. 37062/97, judgment of 2 October 2003..<br><b>22, 140</b>      |                 |
| Zihlmann v. Switzerland, No. 21861/93, decision of 28 June 1995, DR82 .....   | <b>45, 153</b>  |



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