

Special Collection of the Case Law on
Freedom of Expression

**Grand Chamber of the
European Court of
Human Rights**

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Collection directors

Lee C. Bollinger

Catalina Botero-Marino

Editor

Carlo Carvajal and José Ignacio Michaus, editors
of the paper *Special Collection on the Case Law
on Freedom of Expression: Grand Chamber of the
European Court of Human Rights*

Design

Nita Congress, layout and graphic designer

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Table of contents

I. OVERVIEW OF THE EUROPEAN HUMAN RIGHTS SYSTEM	1
II. GLOBAL PERSPECTIVE	2
III. JUDGMENTS OF THE GRAND CHAMBER OF THE EUROPEAN COURT OF HUMAN RIGHTS	3
A. Access to information	3
i. Access to information of public interest	3
ii. Access to medical information	4
B. Freedom of expression	4
i. Freedom of association, assembly, and protest	5
ii. Political expression/political participation	6
iii. Political expression/expression of judges	7
iv. Political expression/expression of public officials	8
v. Political expression/terrorism	8
vi. Political expression/genocide denial	11
vii. Hate speech	11
viii. Media regulation	12
ix. Freedom of the press	12
x. Freedom of the press/protection of sources	15
xi. Freedom of the press/data protection	16
xii. Prior restraint and content regulation	17
xiii. Subsequent liability/civil and criminal defamation	19
xiv. Freedom of religion	21
xv. Privacy	21
APPENDIX	23
ENDNOTES	25

● Overview of the European Human Rights System

The European Human Rights System is a normative and institutional framework created by the [Council of Europe](#) (“CoE” or “the Council”), which is an organization established by the [1949 Treaty of London](#). To achieve its purpose of guaranteeing human rights in Europe, in 1950 the Council adopted the [Convention for the Protection of Human Rights and Fundamental Freedoms](#) (“ECHR” or “European Convention”), which entered into force in 1953. All [47 members](#) of the Council are parties to the ECHR, which is the cornerstone instrument for all the Council’s activities, and its ratification is a prerequisite for joining the organization.

The [European Court of Human Rights](#) (“ECtHR” or “the Court”) is an international tribunal that oversees States’ compliance with the European Convention. While in its original design the European Convention established both the European Commission of Human Rights and the Court, the system was restructured in 1998 to move towards a single court system. During its years of existence, the Commission decided cases and had discretion to refer its reports to the Court, which would render a final and binding decision. Since 1999, the Court has jurisdiction to directly entertain individual claims on violations to the

European Convention. Additionally, the Court has jurisdiction to deliver [advisory opinions](#) at the request of the highest courts and tribunals of State Parties and may hear inter-State applications.

In hearing a case, the ECtHR may have [different formations](#), namely, by a single judge, a three-judge Committee, a seven-judge Chamber, and a seventeen-judge Grand Chamber. The Grand Chamber of the European Court has discretion in hearing cases that, after having been considered by a Chamber, are referred to it by the parties or relinquished to it by a Chamber. Cases are referred or relinquished to the Grand Chamber when: (i) they raise serious questions affecting the interpretation or application of the ECHR; (ii) there is a need to safeguard the consistency of the Court’s case law; or (iii) they concern serious issues of general importance. Accordingly, this paper will only include cases rendered by the Grand Chamber, which tend to build the most important and influential jurisprudence of the ECtHR. While it mainly focuses on key cases on freedom of expression, other Grand Chamber decisions that have touched upon this right but focus on other Articles of the Convention have been included.

II. Global Perspective

As many other international courts and tribunals, the ECtHR has enriched its decisions with those of other international human rights tribunals or treaty-based bodies. This judicial communication reflects the universal, indivisible, interdependent and interrelated nature of human rights, as recognized in different human rights treaties. While the Grand Chamber of the ECtHR mostly refers to its own jurisprudence, our database reflects that it has also engaged with the decisions of other international tribunals and treaty-based bodies. For instance, in *Magyar Helsinki Bizottsag v. Hungary*, the Court referred to the famous decision of the Inter-American Court of Human Rights (“IACtHR”) in *Claude Reyes v. Chile*,¹ where the Court considered that the right to freedom of thought and expression included the protection of the right of access to State-held information; In this sense, the ECtHR confirmed the necessity of recognizing an individual right to access State-held information to assist the public in forming an opinion on matters of general interest. The same case was referred to by the Court in *Stoll v. Switzerland*, where the Grand Chamber underscored the IACtHR’s view that the disclosure of State-held information plays a pivotal role in democratic societies and enables civil society to control governmental actions. Additionally, in *Palomo Sánchez and Others v. Spain*, the Court referred to the IACtHR’s Advisory Opinion on the *Compulsory membership in an association prescribed by law for the practice of journalism*² to emphasize that freedom of expression is a *sine qua non* condition for the development of trade unions, whose rights to express their demands to employers must be duly guaranteed.

With respect to the African System of Human and Peoples’ Rights, in *Magyar Helsinki Bizottsag v. Hungary*, the Court referred to the Declaration of Principles on Freedom of Expression in Africa of the African Commission on Human and Peoples’ Rights (“ACHPR”), to highlight the fundamental and inalienable nature of the human right to seek, receive and impart information and ideas, which is included in the right to freedom of expression. Additionally, in *Stoll v. Switzerland*, the Court referred to a joint declaration issued by four special representatives on freedom of expression, namely, the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe, the Special Rapporteur on Freedom of Expression of the Organization of American States, and the Special Rapporteur on Freedom of Expression of the ACHPR, to recall that journalists should not be subjected to liability for publishing classified or confidential information that was not unlawfully obtained by them.

Finally, the Court has also echoed the rulings of treaty-based bodies, such as the United Nations Human Rights Committee (“UNHRC”). In *Magyar Helsinki Bizottsag v. Hungary*, the Court alluded to the UNHRC’s cases of *Gauthier v. Canada*,³ *Toktakunov v. Kyrgyzstan*,⁴ and *Rafael Rodríguez Castañeda v. Mexico*⁵ to address the importance of accessing information for democratic processes, as well as the link between this right and authors’ opportunity to communicate with the public.

III ● Judgments of the Grand Chamber of the European Court of Human Rights

A. Access to information

Article 10 of the ECHR establishes that the right to freedom of expression “...shall include the freedom to hold opinions and to receive and impart information...” Nevertheless, the ECtHR’s interpretation on the scope of this provision has not followed a straight line. In some of its earlier judgments, like *Roche v. United Kingdom* (2005), the Grand Chamber established that such a right did not impose a positive obligation on the State to disseminate information. However, almost a decade later, the ECtHR argued in *Magyar Helsinki Bizottsag v. Hungary* (2016) that the right to access State-held information may arise when it is instrumental in the exercise of freedom of expression, but it is subject to several conditions. In the present section, some of the Grand Chamber’s most relevant decisions on the issue of access to information will be presented. This section also includes a case where, even if not directly applying Article 10, the Court referred to freedom of expression when assessing the right to privacy.

i. Access to information of public interest

Magyar Helsinki Bizottsag v. Hungary (2016). In this landmark case, the ECtHR held that while Article 10 ECHR does not confer on the individual a general right of access to information held by public authorities, such a right may arise in certain cases. Particularly, taking into account its own jurisprudence, the Court found that the right of access to information may arise where disclosure has been imposed by a judicial order and “where access to information is instrumental for the individual’s exercise of his or her right to freedom of expression, in particular

‘the freedom to receive and impart information’ and where its denial constitutes an interference with that right.” The application before the ECtHR arose from the refusal of two police departments to disclose to a Hungarian NGO the names of their appointed public defenders and the number of the public defenders’ respective appointments. The ECtHR determined that the access to information that was refused in this case was instrumental for the NGO’s exercise of their right to freedom of expression, and met the threshold criteria for a refusal to engage Article 10 ECHR. Notably, the Court established that such criteria comprised the following requirements: that the purpose of the information request is to enable the individual’s exercise of freedom to receive and impart information; that the nature of information generally meets a public-interest; that a consideration is made on whether the person seeking access to information does so with a view to informing the public as a “watchdog”; and that a consideration is made on whether the information requested is ready and available. The ECtHR went on to find that the police departments’ refusal to disclose the information was not necessary in a democratic society, and therefore amounted to a violation of the NGO’s right to freedom of expression. More info [here](#).

Fressoz and Roire v. France (1999). The ECtHR found that the conviction of two journalists for publishing photocopies of illegally obtained tax documents when the information obtained was freely available to the public, violated Article 10 of the ECHR. Roger Fressoz and Claude Roire published information on the earnings of the chairman and managing director of Peugeot, which revealed a 45.9% rise in his salary at a time of industrial unrest. The Court reasoned that the information about Calvet’s annual income was lawful and the applicants’ conviction for having published

the documents could not be justified under Article 10. Furthermore, the Court said that Article 10 protects journalists' right to divulge information on issues of general interest provided that they are acting in good faith and on an accurate factual basis. Hence, Article 10 essentially leaves it up to journalists to decide whether it is necessary to reproduce documents to ensure credibility. Accordingly, in this case, the interest in freedom of the press in a democratic society outweighed the need to punish journalists for publishing the materials. More info [here](#).

ii. Access to medical information

Gillberg v. Sweden (2012). The ECtHR held that a public employee is not protected under Article 10 of the Convention when he refuses to make research material available in cases where (i) such material belongs to a university, (ii) a university is ready to disclose it, and (iii) the employee does not owe any statutory duty of secrecy towards research participants. The Applicant, a university professor leading a project on specific disorders in children, had been convicted for misusing his office after refusing to hand over documents to outside researchers on the grounds that he had promised absolute confidentiality to the patients and their parents. While the Court did not rule out that a negative right to freedom of expression (a right not to impart information) might be protected under Article 10 under certain circumstances, the Court ruled that the research material was owned by the university and that finding for the Applicant would run counter to university's property rights and also impinge upon the outside researchers' rights to access the public documents. The Court also rejected the Applicant's argument that his situation was similar to a journalist protecting sources or to an attorney-client privilege, finding instead that since the Applicant had not been mandated by the research participants as their doctor, he had no duty of professional secrecy towards them. More info [here](#).

Roche v. United Kingdom (2005). In this case, the ECtHR found that the failure to maintain an effective and accessible procedure for accessing medical records in the United Kingdom military was a violation of the right to receive information in terms of the right to a private life under Article 8 of the ECHR. After a former soldier began suffering health problems, he sought access to records to determine whether the tests for chemical weapons he had undergone during his period in the army impacted on his health issues. Following repeated denials and piecemeal disclosure by the Ministry of Defense, the former soldier approached the Court. Although the Court did not find an infringement of the right to freedom of expression, arguing that right does not impose a positive obligation on States to "disseminate information of its own motion," it held that the failure to disclose the information had a sufficient impact on the former soldier's ability to understand the causes of his health conditions and that his right to a private and family life was infringed. More info [here](#).

B. Freedom of expression

Through its application of Article 10 of the Convention, the ECtHR has introduced fundamental standards for the protection of freedom of expression. For instance, the ECtHR has elaborated on the requirements for interfering with the right to freedom of expression, namely, the lawfulness of the measure, the legitimate aim it pursues, and its proportionality and necessity in a democratic society. Other international human rights tribunals have followed the ECtHR and applied these standards, including the IACtHR in *Ricardo Canese v. Paraguay* (2004) and in its Advisory Opinion on the *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (1985). The cases in our database shed light on the variety of themes considered by the ECtHR when addressing the right to freedom of expression under Article 10, ranging from political expression and freedom of the press to hate speech and genocide denial.

The present section contains several categories which aim to highlight relevant issues of freedom of expression discussed in the cases encompassed in this paper. It is important to note that the category of political expression was broken down into more specific subtopics in order to highlight the wide scope of the ECtHR case law. A general category of political expression was not included to prevent an overinclusive topic that obfuscates the variety of issues that have been analyzed by the ECtHR. In addition, this section also includes cases where, even if not directly applying Article 10, the Court referred to freedom of expression when assessing other human rights, including freedom of religion and privacy.

i. Freedom of association, assembly, and protest

Pentikäinen v. Finland (2015). The ECtHR held that Finland did not violate Article 10 of the ECHR when police arrested a photojournalist who ignored police orders to disperse during a violent demonstration. The Court reasoned that “the authorities did not deliberately prevent or hinder the media from covering the demonstration in an attempt to conceal from public gaze the actions of the police with respect to the demonstration in general or to individual protesters,” but simply that “interference with [the journalist’s] right to freedom of expression was ‘necessary in a democratic society’ and did not amount to a violation” of the ECHR. Particularly, while noting the important role of the media in imparting matters of serious public concern, the Court emphasized the duty of journalists to act in good faith and in a professional manner, including the responsibility to act lawfully; thus, it held that “the fact that a journalist has breached the law in that connection is a most relevant, albeit not decisive, consideration when determining whether he or she has acted responsibly.” The Court finally stressed that such conclusion must be seen “on the basis of the particular circumstances of the instant case, due regard being had to the need

to avoid any impairment of the media’s “watchdog” role. More info [here](#).

Kudrevičius and others v. Lithuania (2015)

During a controversy between the government of Lithuania and the agricultural sector, a group of farmers gathered to protest against the lack of adequate measures to protect their interests. The farmers went on to block three major highways, causing the stoppage of traffic. In response, the government arrested and convicted several farmers directly involved in the demonstrations for breaching public order and rioting. The convicted farmers alleged that their criminal convictions interfered with their right to freedom of expression and freedom of assembly guaranteed under Articles 10 and 11 of the ECHR. The Court ruled that the protesters’ criminal convictions did not violate their right to freedom of peaceful assembly as such interference satisfied the requirement of being necessary in a democratic society. It found that domestic authorities did not overstep the limits of their margin of appreciation by holding the protesters criminally liable for intentionally disrupting lawful activities of others through roadblocks on major highways, considered by the Court as a “reprehensible act.” More info [here](#).

Palomo Sánchez and Others v. Spain (2011)

In this judgment, the ECtHR held that the applicants’ rights to freedom of expression and association under Article 10, read in light of Article 11 of the ECHR, had not been violated. The claim before the ECtHR had arisen out of the dismissal of the applicants by Company P for serious misconduct by publishing and circulating a satirical caricature and critical articles about their colleagues. The content in question was published in the monthly newsletter of the trade union of which the applicants were members. The ECtHR held that the applicants’ dismissal was not disproportionate and his articles had overstepped the limits of criticism admissible in labor relations by causing damage to the reputation of the applicants’ colleagues. It also held that the offensive expression did not have any public interest value as labor relations must be based on

mutual trust in order to be fruitful, arguing that an attack on the dignity of individuals in the professional environment was a serious form of misconduct which justified severe sanctions due to its disruptive effects. More info [here](#).

Hashman v. United Kingdom (1999). The ECtHR held that the United Kingdom violated Article 10 of the ECHR on the grounds that the legal basis for the imposition of an order on two individuals was not “prescribed by the law.” Two protesters had attempted to disrupt a fox hunt and had been ordered to “keep the peace and be of good behavior” in future. The Court held that, as they had not been found to have acted unlawfully in their protest against the hunt, the order was one to refrain from undetermined and uncertain behavior and therefore was not foreseeable and not a justifiable limitation of the protesters’ right to freedom of expression. More info [here](#).

Other relevant cases on these topics are *Rekvényi v. Hungary* (1999), and *Vogt v. Germany* (1995). However, they have been included in other sections of this paper, as they apply to other issues as well.

ii. Political expression/political participation

Magyar Kétfarkú Kutya Párt v. Hungary (2020). The ECtHR found that Hungary violated Article 10 of the Convention by imposing a fine on a political party, which was critical of holding the referendum. The Party in question developed a mobile application allowing voters to take and anonymously share pictures of their ballots or, if they were not participating in the referendum, to upload a picture of the activity they were doing. The Court stated that the app was a legitimate form of speech and, while the Government may limit the right to freedom of expression, its interference must be prescribed by law. It also held that the legal basis for prohibiting the app and fining the party was not precise or sufficiently foreseeable and was therefore not a justifiable limitation

of the right. The Court emphasized political parties’ importance to political plurality in democracies and stated that “restrictions on their freedom of expression therefore have to be made the subject of a rigorous supervision.” More info [here](#).

Karácsony and Others v. Hungary (2016). The ECtHR held that while parliamentarians can be required to adhere to parliamentary rules of conduct, imposing a fine for breach of these rules without a hearing violates their rights. The case came about after seven members of the Hungarian parliament showed their opposition to new laws on tobacco and on the distribution of agricultural and forestry lands by chanting, waving banners and placards, and placing a wheelbarrow full of soil in the parliamentary chamber. They were each fined without being given a chance to defend their conduct. More info [here](#).

Rekvényi v. Hungary (1999). The ECtHR found that the Hungarian prohibition on members of the police to join political parties was not a violation of Articles 10 and 11 of the ECHR. Rekvényi was a police officer and the Secretary General of the Police Independent Trade Union. The Union filed a constitutional complaint against an amendment to the Constitution of Hungary that prohibited members of the armed forces, the police, and security services from joining a political party or engaging in political activities. The ECtHR determined that there was no violation of Articles 10 and 11, basing its reasoning on the relatively recent Hungarian experience with a non-democratic regime, in which police forces were in the service of the ruling political party. More info [here](#).

Bowman v. The United Kingdom (1998). The ECtHR ruled that the United Kingdom had violated the applicants’ freedom of expression by initiating criminal proceedings against her for the dissemination of 1.5 million leaflets during a political campaign. The applicant was against abortion and the leaflets contained information about the opinions of three candidates for election on abortion. She was charged with violating

a UK election law enacted to preserve fair and democratic elections, which prohibited spending more than five pounds on disseminating information to electors to promote or procure the election of a candidate in the period of four to six weeks before elections. The ECtHR found that the mere fact of initiating criminal proceedings against the applicant interfered with her right to freedom of expression. Such interference was not proportionate since she only wanted to inform her fellow citizens about the opinions of the three candidates on abortion. Even though she had been able to spend more than five pounds in any other period except just before the elections, the ECtHR found that she would not have achieved the same effect during some other period. More info [here](#).

Vogt v. Germany (1995). In this decision, the Court held that a school teacher's dismissal from the civil service due to her political activities on behalf of the German Communist Party ("DKP") had breached Article 10 and Article 11 of the European Convention. Vogt was an active member of the DKP and even stood as the DKP candidate in elections after she had been appointed as a permanent public servant and was teaching at a public secondary school. She was dismissed from her position on the ground that her political activities were in violation of a law that banned employment of extremists in the civil service, failing to comply with her duty of political loyalty. The Court found that while her dismissal was a lawful interference with her freedom of expression and served a legitimate aim, it was disproportionate to that aim. The Court observed that there was no evidence that Vogt herself, even outside her work at school, actually made anti-constitutional statements or personally adopted an anti-constitutional stance. The Court found a violation of Article 11 as well, by treating the interference with the applicant's right to free association in the light of Article 10, as a subset of the interference with her right to freedom of expression. More info [here](#).

Other relevant cases on these topics are *Stoll v. Switzerland* (2007), *Şahin v. Turkey* (2005), *Lehideux*

and Isorni v. France (1998), and *Lingens v. Austria* (1986). However, they have been included in other sections of this paper, as they apply to other issues as well.

iii. Political expression/expression of judges

Baka v. Hungary (2016). In this decision, the ECtHR held that Hungary had violated the right to freedom of expression of the Supreme Court of Hungary's President by terminating his contract after he spoke publicly about judicial reforms. After the adoption of legislation that changed the structure of the Hungarian courts and lowered judges' retirement age, the judge criticized the reforms in a series of public letters and in speeches before Parliament. The Court held that the termination of his contract was directly linked to the expression of his views and therefore constituted an interference with his rights. It stressed that the Council of Europe obligates judges to promote and protect judicial independence, and that the judge's comments "fell within the context of a debate on matters of great public interest [and] called for a high degree of protection for his freedom of expression and strict scrutiny of any interference." More info [here](#).

Wille v. Liechtenstein (1999). The ECtHR held that threatening and effectively refusing to re-appoint a civil servant on account of his publicly expressed opinion was a violation of Article 10 of the ECHR. The applicant, a Liechtenstein national, was President of the Administrative Court. In a public lecture, he presented his personal views that the constitutional court has a right to interpret the constitution in case of disagreement between the Prince and the Diet. Unhappy and in disagreement with this comment, the Prince sent the applicant a series of letters expressing his intention not to re-appoint him. In 1997, when the applicant was re-nominated, the Prince refused his re-appointment. The Court held that the ECHR does not discriminate against public officials. Their rights are protected by the Convention and the Court will look at interference with the freedom of expression of a judge in close scrutiny.

The Prince's decision to not re-elect the applicant was based on his controversial views, rather than on his performance. For the Court, this was a disproportionate interference with the applicant's freedom of expression, as the opinion was neither untenable nor incompatible with his duties as a public officer. The Court further held that Liechtenstein violated Article 13 in connection to Article 10 of the ECHR by failing to provide the means to ensure the applicant's right to an effective remedy. More info [here](#).

iv. Political expression/expression of public officials

Guja v. Moldova (2008). In this landmark case, the ECtHR ruled that Moldova breached Article 10 of the ECHR when it dismissed a civil servant who had revealed information of public interest regarding attempts by high-ranking politicians to influence the judiciary. The Court noted that Article 10 extends to both public servants and workplace matters, and that civil servants may “become aware of in-house information, including secret information, whose divulgence or publication corresponds to a strong public interest.” Considering the available channels for disclosure, the public interest in the disclosed information, its authenticity, the detriment to the State, the applicant's good faith, and the severity of his sanction, the Court concluded that the interference with the applicants' right was not necessary in a democratic society. It did so by highlighting the importance of the right to freedom of expression on matters of general interest, the right of civil servants and other employees to report illegal conducts, the duties and responsibilities of employees towards employers, and the employers' rights to manage their staff. In any case, the Court emphasized that a case-by-case analysis of the context around the release of information—such as the information the complainant released here—was necessary to an Article 10 determination. More info [here](#).

v. Political expression/terrorism

Selahattin Demirtaş v. Turkey (No. 2) (2020).

In this landmark case, the ECtHR found that the Turkish government's attempts to curtail the political speech of its adversaries, most notably of Demirtaş (the leader of the opposition), violated Article 10 and various other conventional rights. Following his active political speeches and statements against the government on the Kurdish-Turkish conflict, Demirtaş was arrested on suspicion of membership in an armed terrorist organization and inciting others to commit a criminal offence. The ECtHR found a violation of Demirtaş's right to freedom of expression on the grounds that the lifting of his parliamentary immunity as a result of a constitutional amendment, his subsequent detention and continued pre-trial detention, and the criminal proceedings brought against him on the basis of evidence comprising his political speeches, had not complied with the requirement of the quality of law for lack of foreseeability. For the Court, domestic courts had applied a broad interpretation of national law that failed to afford the applicant with adequate protection against arbitrary interference with his rights; especially, given that such interpretation entailed “equating the exercise of the right to freedom of expression with belonging to, forming or leading and armed terrorist organization.” In holding that Demirtaş's detention had “pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate, which [were] at the very core of the concept of a democratic society,” the Court ordered the Government to take all necessary measures to secure his immediate release. The Court also stated that the continuation of Demirtaş's pre-trial detention would amount to elongation of the ECHR violations, as well as breach of Turkey's obligation to abide by the Court's judgment in accordance with Article 46(1) of ECHR. More info [here](#).

Gerger v. Turkey (1999). The ECtHR ruled that the conviction of a journalist for writing a political speech critical of the government was a violation of Article 10 of the European Convention. The government

accused the applicant of promoting separatism and he was convicted under the Prevention of Terrorism Act. The ECtHR found that this conviction was adequately prescribed by law and pursued the legitimate aim of protecting national security and public order. However, it still violated Article 10 because it was unnecessary. The applicant's political speech was specially protected and critical to holding a democratic government in check. He had also in no way incited violence through words or context. Furthermore, a disproportionate judgment was handed down to the applicant, particularly considering that due to a change in domestic law, he was sentenced twice for the same offense. More info [here](#).

Sürek v. Turkey (No. 1) (1999). The ECtHR found no violation of a publisher's freedom of expression for disseminating separatist propaganda. Kamil Tekin Sürek, a majority shareholder of a weekly review in Istanbul, was convicted under the Prevention of Terrorism Act 1991 for publishing two letters submitted by readers which contained political speech criticizing the Turkish government and promoted the cause of a Kurdish rebel movement. The Court based its reasoning on the adequate prescription by law of the conviction, its pursuance of the legitimate aims of protection of national security, territorial integrity and public order in Turkey in light of the violent separatist movement in the south-east, and necessity in a democratic society. The measures were found necessary mainly because the letters had: used inflammatory language intended to incite hostilities; been published in a sensitive security context; and named persons responsible for atrocities, thus endangering them. The Court found that the owner was vicariously responsible for their publication because, as a partial owner, he should have had editorial control over the direction of the review. Therefore, the Court held that the Article 10 rights of the applicant had not been violated. More info [here](#).

Ceylan v. Turkey (1999). The ECtHR held that Turkey had violated Article 10 for convicting Ceylan under the Criminal Code for "non-public incitement to

hatred and hostility" after he published an Article on the Turkish question. The conviction was found to be sufficiently prescribed by law, and in pursuance of the legitimate aims of national security, territorial integrity, and public order. However, it was considered not necessary in a democratic society because the applicant had engaged in political speech in a political position—as a trade union leader—which deserved heightened protection. He had not incited any violence or hostility, and as a result of his conviction, had lost his position as leader and several civil and political rights. Thus, the Court found his conviction and sentencing disproportionate and awarded him non-pecuniary damages. More info [here](#).

Polat v. Turkey (1999). The ECtHR ruled that the right to freedom of expression under Article 10 of the ECHR of a Turkish writer had been violated by the State when he was prosecuted and convicted under the Prevention of Terrorism Act for disseminating separatist propaganda and publishing a book that described historical events relating to the Kurdish rebel movement in Turkey. While the Court found that the conviction was prescribed by law and pursued the legitimate aim of protecting national security and public order, the writer's imprisonment and payment of a fine was ultimately considered disproportionate and unnecessary by the Court. This, given that the applicant had engaged in political expression which had heightened protection under the Convention. Furthermore, the applicant had not incited violence, and the effect of his speech was also likely to be limited because of his status as a private individual and the dissemination of his speech through a book—and not in mass media. Finally, the penalties imposed on him were considered disproportionate. More info [here](#).

Okçuoğlu v. Turkey (1999). The ECtHR held that Turkey had violated Article 10 of the ECHR for convicting a lawyer for the dissemination of separatist propaganda based on comments he had made during a round-table discussion that was subsequently covered by a magazine. The Court held that although

the conviction was prescribed by law and pursued the legitimate aim of protecting national security, territorial integrity, public order, and national unity, it was not a necessary interference with his rights in a democratic society. This, given that political speech deserved heightened protection, and the press had an essential role of keeping the public informed. In the case at hand, it had to be appreciated that the applicant's comments, although not neutral, did not amount to incitements to violence. Furthermore, the magazine in which they had been published had a low circulation, limiting potential impacts. Moreover, the punishment meted out to the applicant—a prison term along with a fine that was later increased—was disproportionate. More info [here](#).

Sürek and Özdemir v. Turkey (1999). The ECtHR found that the conviction of the owner and chief editor of a newspaper for publishing an interview with a commander of the Kurdistan Workers' Party violated the right to freedom of expression. The owner had been sentenced to a fine, and the editor to a fine and six months imprisonment. Notwithstanding the growing concern regarding the security situation in parts of the country, the Court held that mere publication of an interview with a designated hostile organization could not itself justify an interference with the applicants' freedom of expression. It also found that Turkish courts had failed to have sufficient regard to the public's right to be informed. More info [here](#).

Arslan v. Turkey (1999). The ECtHR found that the conviction of Arslan for publishing a book which contained criticism of the Turkish government's actions violated his right to freedom of expression under Article 10 of the ECHR. The applicant was first convicted in 1991 on grounds that his book encouraged separatism and incited violence. With the passing of a new law, his conviction was invalidated. Shortly thereafter, his book was republished, and he was charged again under different criminal provisions for propaganda against the unity of the State. The applicant was convicted, and his appeals were unsuccessful. The

ECtHR noted the importance of political speech in a democratic society and the limited reach of the book because of its mode of publication, and concluded that the tone did not incite violence. Furthermore, penalties against the applicant were considered particularly severe, as he was convicted twice. Thus, the conviction was found to be an unnecessary interference in a democratic society. More info [here](#).

Incal v. Turkey (1998). The ECtHR found that the conviction of Incal for participating in the preparation of a political leaflet containing criticism of the Turkish government's actions against Kurdish street traders and stall keepers violated his right under Articles 10 and 6 of the European Convention. The applicant, as a member of the executive committee of the Izmir section of the People's Labor Party, had decided to distribute pamphlets criticizing measures by local authorities which affected the rights of Kurdish people. However, the applicant and the members of the executive committee were accused of inciting hatred and hostility through racist words and were charged under domestic terrorism laws. The Court noted that freedom of expression is particularly important for political parties and their active members since they represent their electorate, draw attention to their concerns and defend their interests. It did not discern anything which warranted the conclusion that Incal was responsible for the problems of terrorism in Turkey, and more specifically in Izmir. In conclusion, the applicant's conviction was held to be disproportionate to the aim pursued, and therefore unnecessary in a democratic society. More info [here](#).

Zana v. Turkey (1997). In this judgment, the Court held that the conviction by the Turkish courts of a politician based on published comments in support of an illegal armed group, did not violate his freedom of expression rights under Article 10 of the European Convention. Zana was a former mayor of the largest city in south-eastern Turkey. In 1987, he was accused of defending an act punishable by law as a serious crime for his remarks supporting the Workers' Party

of Kurdistan made during an interview. The applicant was later sentenced to prison. The ECtHR held that, given the serious disturbances in south-east Turkey at the time when the applicant made the statements, the publication of his interview was likely to exacerbate an already explosive situation in Turkey. Consequently, the Court held that the conviction of the applicant answered a pressing social need and was proportionate to the legitimate aims pursued. Bearing in mind the State's margin of appreciation, the ECtHR held that there was no violation of the applicant's right to freedom of expression under Article 10 of the ECHR. More info [here](#).

Several of the decisions mentioned here are part of a series of cases against Turkey at the material time relating to activities of the Kurdish separatist movement, or the so-called "Turkish question," namely, *Okçuoğlu v. Turkey* (1999), *Karataş v. Turkey* (1999), *Arslan v. Turkey* (1999), *Polat v. Turkey* (1999), *Ceylan v. Turkey* (1999), *Gerger v. Turkey* (1999), *Erdoğdu and İnce v. Turkey* (1999), *Başkaya and Okçuoğlu v. Turkey* (1999), *Sürek and Özdemir v. Turkey* (1999), *Sürek v. Turkey (No. 1)* (1999), *Sürek v. Turkey (No. 2)* (1999), *Sürek v. Turkey (No. 3)* (1999), and *Sürek v. Turkey (No. 4)* (1999).

vi. Political expression/genocide denial

Perinçek v. Switzerland (2015). This landmark case is about Doğu Perinçek, the Chairman of the Turkish Workers' Party, who made several public statements in Switzerland on the Armenian genocide. In consequence, the Switzerland-Armenia Association brought a criminal complaint against Perinçek, who was sentenced to pay 100 Swiss francs for 90 days, a sum of 3,000 Swiss francs, replaceable with 30 days imprisonment, and 1,000 Swiss francs to the Switzerland-Armenia Association for its non-pecuniary damages. The ECtHR held that Perinçek's criminal conviction and sentence were properly prescribed by law in pursuant to the legitimate aim of protecting Armenians' identity and dignity. However, in balancing the right to

freedom of expression under Article 10 and the right to private life under Article 8 of the ECHR, the Court concluded that the Swiss government's interference with Perinçek's right to freedom of expression was not necessary in a democratic society. Taking into account the context in which the applicant's statements were made, that they did not amount to a call for hatred, that Switzerland had no international obligations to criminalize them, and that the interference took the serious form of a criminal conviction, the Court concluded that it was unnecessary in a democratic society and thus found a violation of Article 10. The Court also assessed the scope of the "abuse clause" contained in Article 17, under which nothing in the ECHR may be interpreted as implying any right to perform acts aimed at destructing the rights and freedoms recognized therein. Considering it "only applicable on an exceptional basis and in extreme cases," the Court found that the applicability of Article 17—which depended on the applicant's intention to rely on the Convention for the destruction of its rights—was not immediately clear. The Court thus decided to join the question of Article 17 to the merits of the applicant's complaint under Article 10. More info [here](#).

vii. Hate speech

While this section only addresses judgments rendered by the Grand Chamber of the ECtHR, there is a substantial amount of remarkable case law on the issue of hate speech rendered by the Court at the level of decisions on admissibility or Chamber judgments. More info [here](#).

Lehideux and Isorni v. France (1998). In this decision, the ECtHR held that the right to freedom of expression, as enshrined in the European Convention, covers the expression of ideas and information which shocks, offends or disturbs. However, the justification of a pro-Nazi policy could not be allowed to enjoy the protection afforded by Article 10 ECHR. Although the applicants explicitly distanced themselves from Nazi atrocities voicing their disapproval, Article 17 prevented

the expression because it was considered an abuse of ECHR rights. More info [here](#).

Jersild v. Denmark (1994). In this decision, the Court determined that the conviction of a Danish journalist for aiding and abetting a xenophobic group violated freedom of expression. Jersild broadcast over the radio an interview with members of the Greenjackets, a radical xenophobic group, in which the interviewees made derogatory statements about racial minorities and immigrants; a Danish court fined Jersild, as well as the head of Denmark Radio's news section for publishing racist statements. The ECtHR ruled that such a measure violated freedom of expression because the manner in which the statements were presented by the applicant was "sufficient to outweigh the effect, if any, on the reputation of others" and that there was insufficient evidence to show that the restriction was "necessary in a democratic society." For the Court, "news reporting based on interviews, whether edited or not, constitutes one of the most important means whereby the press is able to play its vital role of 'public watchdog'" and 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." While the Court acknowledged that Greenjackets' remarks were more than insulting to members of targeted groups and, as such, were not protected by the ECHR, it noted that nothing showed that the feature was such as to justify the conviction of the applicant. Accordingly, the Court found a violation of Article 10 of the ECHR. More info [here](#).

viii. Media regulation

Centro Europa 7 S.R.L. v. Italy (2012). The ECtHR held that Italian legislative measures which had the effect of excluding an audio-visual broadcaster from accessing broadcasting frequencies was a violation of the right to freedom of expression. The applicant had been awarded a license to transmit programs in 1997.

However, it was not until 2008 that it was allocated a frequency on which to broadcast. The Italian courts awarded damages to the broadcaster but the company brought an application to the Court, arguing that the compensation it had received was insufficient. The Court held that the Italian government had breached the broadcaster's legitimate expectations and prevented it from pursuing its economic activities for more than ten years. It also concluded that the legislative framework was vague and imprecise and the interference in the broadcaster's right to freedom of expression was not justified. More info [here](#).

ix. Freedom of the press

Couderc and Hachette Filipacchi Associés v. France (2016). In this landmark case, the ECtHR held that French courts had violated Article 10 of the ECHR by interfering with a magazine's right to freedom of expression with respect to the publication of an Article on the unrecognized child of the Prince of Monaco. For the Court, while private individuals may claim protection for their private life, the same is not true of public figures; only in certain circumstances may they rely on a "legitimate expectation" of protection of and respect for their private lives. The Court held that the existence of an illegitimate child in the context of a monarchy is undeniably in the public interest and that French courts had failed to properly balance the Prince's privacy interests with the privacy and freedom of expression right of his son and of his son's mother. In conclusion, the Court held that, whilst the arguments advanced by the Government with regard to the protection of the Prince's private life and the right to his own image were relevant, they could not be considered sufficient to justify interference with the magazines' rights in this case. Accordingly, the Court concluded that there had been a violation of Article 10 of the ECHR. More info [here](#).

Delfi AS v. Estonia (2015). In this key case, the ECtHR ruled that Estonia did not breach Article 10 of the ECHR when it held an online news outlet liable

for defamation based on comments posted in the comments section of its articles. The Court conducted a three-part test in determining whether the news outlet's rights had been violated. First, the ECtHR found that Estonia interfered with the outlet's right to free expression when it imposed civil penalties for the defamatory comments. Second, the Court held that the award of damages was prescribed by law, and that the outlet violated Estonian law. Third, the Court noted that imposing civil penalties on the outlet pursued the legitimate aim of "protecting the reputation and rights of others." Finally, the Court engaged in a balancing test to determine whether Estonia's interference with the outlet's rights was necessary in a democratic society. Considering the extreme nature of the comments in question, the fact that they were posted in reaction to an Article published by the applicant company, the insufficient measures taken by the company to remove those comments amounting to hate speech and speech inciting violence, and the moderate sanction imposed to it, the Court found that such liability "was based on relevant and sufficient grounds, having regard to the margin of appreciation afforded to the respondent State." More info [here](#).

Morice v. France (2015). In this landmark case, the ECtHR held that the judgment against Morice for defamation was a disproportionate interference with his right to freedom of expression, and therefore not "necessary in a democratic society," resulting in an Article 10 violation. Morice was a French lawyer who was convicted for public defamation of a judge based on an Article in the daily newspaper *Le Monde*, in which Morice qualified such judge's conduct as being at odds with the principles of impartiality and fairness. For the Court, the remarks made by Morice did not constitute gravely damaging and essentially unfounded attacks on the action of the courts, but were criticisms leveled at the judges as part of a debate on a matter of public interest concerning the functioning of the justice system in the context of a case which had received wide media coverage from the outset. Although harsh, they still constituted value judgments

with a sufficient "factual basis." The Court, taking note of the possible chilling effect of the criminal conviction and also considering the important role of lawyers in criticizing the dysfunctions within the administration of justice and in informing the public, found that Article 10 had been violated. More info [here](#).

Axel Springer AG v. Germany (2012). The ECtHR ruled that Germany had violated the applicant's right to freedom of expression when it fined a magazine and prohibited further publication of articles concerning the arrest of an actor for cocaine possession. The actor had brought an action alleging that the magazine had breached his right to privacy. The Court reasoned that the articles could be considered to present a degree of general interest since they concerned public judicial facts obtained from official sources about someone well-known to the public regarding his arrest in a public place. Particularly, it noted that such general interest would vary in degree based on factors such as "the degree to which the person concerned is known, the circumstances of the case and any further developments arising during the proceedings." In respect of the content, form and consequence of the articles, the Court found that they only related to the facts and did not contain any "disparaging expression or unsubstantiated allegation" and that "[t]he fact that the first Article contained certain expressions which, to all intents and purposes, were designed to attract the public's attention cannot in itself raise an issue under the Court's case-law." As to the severity of the sanctions, the Court considered that these were lenient but nonetheless capable of having a "chilling effect." Notwithstanding that the case concerned a minor and common crime and the lenient nature of the sanctions, the Court considered they were unnecessary in a democratic society and disproportionate to the legitimate aim pursued. More info [here](#).

Stoll v. Switzerland (2007). In this key case, the ECtHR found no violation of the right to freedom of expression where a journalist was fined 800 Swiss Francs for publishing an Article about a confidential

diplomatic strategy paper. The fine was imposed pursuant to a law criminalizing the publication of “secret official deliberations.” Noting the paramount importance of the press in a democratic society, and the role it plays as a “public watchdog,” the Court ruled that protections afforded to journalists are subject to the proviso that “they are acting in good faith and on an accurate factual basis and provide ‘reliable and precise’ information in accordance with the ethics of journalism.” In the words of the Court, in “a world in which the individual is confronted with vast quantities of information circulated via traditional and electronic media and involving an ever-growing number of players, monitoring compliance with journalistic ethics takes on added importance.” In this sense, the ECtHR also gave Switzerland a certain margin of appreciation in how to deal with preserving confidential or secret documents. Moreover, the Court criticized the fact that the document was presented in a misleading and sensationalist manner, and took note of the modest nature of the fine against the journalist, finding the journalist’s conviction to be a proportionate restriction on the right to freedom of expression. More info [here](#).

Pedersen v. Denmark (2004). In this case, the Grand Chamber found that the criminal conviction for defamation of two Danish journalists for alleging in television programs that a police chief superintendent tampered with evidence in a murder case was proportionate to the legitimate aim of protecting others’ reputation and rights. The two journalists had produced two documentaries questioning whether the conviction of an individual for killing his wife was correct and whether the police had tampered with evidence. The murder conviction was later overturned following an inquiry which recommended a retrial but did not find any evidence of police tampering. The Court held that the defamation conviction was necessary in a democratic society as the journalists had no factual basis on which to base their allegations. The Court held that the documentaries threatened the chief superintendent’s right to be presumed innocent until proven guilty. More info [here](#).

Cumpana and Mazare v. Romania (2004). In this judgment, the ECtHR overturned criminal sanctions imposed on two applicants for defamatory articles and pictures published in a newspaper. *Telegraf*, a Romanian newspaper, published an article that implied governmental corruption. Criminal proceedings were initiated against the publishers for defamation and insult, which resulted in a ten-month sentence and a hefty fine. The Court reasoned that the criminal sanction was not proportionate to the alleged crime, and that it produced a chilling effect on free speech. More info [here](#).

Perna v. Italy (2003). In its judgment, the ECtHR held that the conviction for defamation and imposition of a fine against an Italian journalist for implying that a Public Prosecutor was not objective did not violate the right to freedom of expression. The journalist had described the prosecutor as a “communist militant” and accused him of paying a mafia-related informer. The Court held that the conviction and sanction was not disproportionate and was a necessary interference of the journalist’s right to freedom of expression. More info [here](#).

Bladet Tromsø and Stensaas v. Norway (1999). The ECtHR found that Norway had breached the rights of the applicants—the publisher and editor of the newspaper *Bladet Tromsø*—under Article 10 of the ECHR by holding them guilty for defamation. This conviction followed the publication of a report and statement made by an inspector appointed by the Ministry of Fisheries, Lindberg, to inspect seal hunting. The report and the statement alleged that members of a hunting vessel had committed criminal acts and been particularly cruel to seals. The Ministry of Fisheries impugned the authenticity of the report, and the crew of the vessel won a charge of defamation against Lindberg. They subsequently won a case of defamation against the applicants as well. The ECtHR found that the applicants’ conviction was an unjustified interference with their rights because the published statements and their report, taken in their context, did

not constitute sufficient reasons for an interference with freedom of press. The applicants had acted in good faith in discharging their public watchdog function by reporting on a matter of public interest. They were further discharged from their duty of verifying the report issued by Lindberg, because the nature and degree of defamation were not so serious, and the context of the issuance of the report suggested a high degree of credibility. More info [here](#).

Dalban v. Romania (1999). The ECtHR held that convicting a journalist for criminal defamation when there was no evidence to prove the falsity of his statement was a disproportionate interference with his freedom of speech and expression. The applicant, a Romanian journalist, was convicted for defaming the chief executive of a state-owned company and a Senator for alleged fraud in the articles he published in a weekly magazine. The Court found that the articles were written on matters of public interest and there was no proof that the descriptions in the articles were untrue. According to the Court, journalists should not be debarred from publishing their opinion. As a public watchdog, a journalist cannot be penalized for imparting critical value judgments on matters of public interest, and hence, the Court found that Romania had violated Article 10 of the Convention. More info [here](#).

Lingens v. Austria (1986). In this important decision, the ECtHR found that the defamation conviction of a journalist who had criticized a politician violated his right to freedom of expression. Lingens, an Austrian journalist, had accused the President of the Austrian Socialist Party of having an accommodating attitude towards former Nazis who had continued to take part in Austrian politics. The ECtHR reasoned that politicians and other public officials should tolerate a high degree of criticism due to their public position in democratic societies. Furthermore, the Court noted that the journalist was covering political issues that were of immense public interest to Austrians, and that censoring the articles would deter other journalists from contributing to public discussion. More info [here](#).

The Sunday Times v. United Kingdom (1979). The ECtHR held that an injunction restraining the *Sunday Times* from publishing an Article on a settlement being negotiated out of court violated its freedom of expression. In 1972 the British newspaper published articles concerning the settlement negotiations for the “thalidomide children,” following pregnant women’s use of the drug thalidomide that resulted in severe birth defects. The newspaper had criticized the settlement proposals and subsequently, an injunction was issued based on the claim that future publications would constitute contempt of court. Although the Court found that the interference was prescribed by law and pursued the legitimate aim of safeguarding the impartiality and authority of the judiciary, it was not necessary in a democratic society. The Court observed that the right to freedom of expression guarantees not only the freedom of the press to inform the public but also the right of the public to be properly informed, and the thalidomide disaster was a matter of undisputed public concern. The Court noted that the proposed Article was moderate and balanced in its arguments on a topic that had been widely debated in society and therefore the risk of undermining the authority of the judiciary was minimal. The Court concluded that the interference did not correspond to a social need sufficiently pressing to outweigh the public interest in freedom of expression within the meaning of the European Convention. More info [here](#).

Other relevant cases on these topics are *Pentikäinen v. Finland* (2015), *Gerger v. Turkey* (1999), *Sürek and Özdemir v. Turkey* (1999), and *Jersild v. Denmark* (1994). However, they have been included in other sections of this paper, as they apply to other issues as well.

x. Freedom of the press/protection of sources

Sanoma Uitgevers B.V. v. The Netherlands (2010). In its judgment, the ECtHR concluded that the order issued to a magazine by the public prosecutor of Amsterdam to hand over photographs was a violation

of the journalists' rights to protect their sources. The ECtHR held that orders to disclose sources should be met with procedural safeguards, including the guarantee of ex-ante review by an impartial decision-making body or judge with the power to assess whether a requirement in the public interest overrides the principle of protection of journalistic sources and thus prevent unnecessary access to information that could disclose sources' identity. In particular, the Court established that the right to protect journalistic sources is part of Article 10's protection of the right to receive and impart information, and that without this protection "the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information to the public may be adversely affected." In assessing whether the limitation to the right was justified, the Court emphasized that domestic laws must have sufficient safeguards against arbitrary interference and not confer wide discretion on the executive. Accordingly, the Court found that the quality of the national law was deficient because there was no procedure with adequate legal safeguards for a party to obtain an independent assessment as to whether the interest of a criminal investigation overrode the public interest in the protection of journalistic sources. Therefore, the Court found a violation of Article 10 of the ECHR, as the interference complained of was not "prescribed by law." More info [here](#).

Goodwin v. United Kingdom (1996). In this landmark judgment, the Court found that a judicial request for disclosure of a confidential source in a journalistic context was an impermissible violation of Article 10 of the ECHR. The applicant was a trainee journalist who received sensitive information regarding the financial state of a company that appeared to come from a confidential corporate plan, one copy of which had gone missing. The Court found that injunctions to prevent the publication of the information could be considered "necessary in a democratic society" but disclosure of the source of said information was unnecessary. For the Court, the company's legitimate reasons for wishing disclosure, namely, to prevent

further dissemination of the confidential information and to take action against the source—who was presumed to be an employee—were outweighed by the interest of a free press in a democratic society. The Court also noted the importance of protecting journalistic sources for press freedom and reasoned that disclosure would produce a chilling effect in society, unless disclosure is justified by public interest. More info [here](#).

xi. Freedom of the press/data protection

Big Brother Watch and Others v. The United Kingdom (No. 2) (2021). In this key case, the ECtHR concluded that the UK's Regulation of Investigatory Powers Act (RIPA) had violated the rights to privacy and freedom of expression contained in the ECHR. The applicants challenged the compatibility of three electronic surveillance programs operated by the UK's Government Communications Headquarters with the Convention. These programs consisted of: (i) bulk interception under the TEMPORA program, which stored and managed large volumes of data drawn from bearers; (ii) the intelligence-sharing regime with foreign countries, particularly the US through the medium of the PRISM and Upstream programs; and (iii) the procurement of communications data from communications service providers. Complaints were submitted after Edward Snowden's disclosures revealed surveillance programs managed by both the US and the UK. The ECtHR found that UK's regimes on bulk interception and obtaining data from communications service providers had violated the ECHR given the following deficiencies: (i) the absence of independent authorization and oversight (the so-called "end-to-end safeguards"); (ii) no categories of selectors were included in the applications for a warrant; (iii) there was no prior internal approval of the selectors linked to an identifiable individual; and (iv) the State did not examine other less intrusive measures before activating and implementing electronic surveillance programs. Particularly, with respect to the right to

privacy under Article 8 of the ECHR, the Court noted that, while States' have a margin of appreciation to implement a bulk interception regime that may be of vital importance in identifying threats to their national security, the weaknesses of the RIPA made it impossible for the UK to fulfill the "minimum safeguards" to guarantee the right to privacy when implementing electronic surveillance programs. Moreover, since the UK could access and examine confidential journalistic material by only justifying an "overriding requirement in the public interest," without first establishing: (i) limitations on when such communications could be accessed and examined by national authorities; or (ii) adequate measures to ensure the protection of confidential journalistic information, the Court held that a violation of Article 10 of the Convention was engaged by the RIPA. More info [here](#).

Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland (2017). The ECtHR found no violation of the right to freedom of expression where Finnish courts and authorities had prohibited two companies from processing personal tax data in a particular manner and to a particular extent. The companies had collected and published information about income and taxable assets of 1.2 million persons in Finland, first through a newspaper and later through a text-messaging service by which people could text someone's name to a service number and receive that person's taxation information. The ECtHR gave a wide margin of appreciation to the domestic authorities in balancing the right to freedom of expression against the right to privacy. The ECtHR could not find that the publication of the tax data *en masse* contributed to a debate of public interest. It also noted that although certain tax data was publicly accessible in Finland, a distinction was to be drawn between this accessibility and the unlimited extent to which the data was published by companies, as it rendered the data accessible in a manner and to an extent not intended by legislators. The Court concluded that the restrictions were prescribed by law and pursued the legitimate aim of protecting taxpayers' right to privacy. More info [here](#).

Bédat v. Switzerland (2016). This key case concerns Arnaud Bédat, a journalist for the Swiss weekly magazine *L'illustré*. Bédat published an Article about a controversial car accident that resulted in the death of three people. Particularly, he discussed an ongoing criminal investigation against the driver in that collision, including the questions asked by the investigating officers and the judge, the driver's replies, the description of the criminal charges, as well as the copies of the driver's letters submitted to the investigating judge. Subsequently, the public prosecutor brought a complaint against the journalist for having published confidential documents regarding the accused in breach of Switzerland's Criminal Code. Bédat was sentenced to one-month imprisonment. The Lausanne Police Court then replaced the sentence with a fine of 4,000 Swiss francs. Considering that States have a certain margin of appreciation in assessing interferences with freedom of expression when balancing conflicting private interests, the Court addressed the following factors concerning the case at hand: the manner in which Bédat came into possession of the information; the content of his article; its contribution to a public interest debate; its influence on criminal proceedings; its infringement of the driver's right to privacy; and the proportionality of the imposed penalty against Bédat. Based on such analysis, the ECtHR concluded that there was no violation of Article 10 of the Convention. More info [here](#).

xii. Prior restraint and content regulation

Animal Defenders International v. United Kingdom (2013). In this key case, the ECtHR ruled that the U.K. did not violate freedom of speech by banning political advertisements on television and radio because this did not ban all political speech—only advertisements—and there were other means available through which these political advertisements could still be expressed. The Court utilized a balancing approach and considered on the one hand, "the applicant NGO's right to impart information and ideas of general interest which the public is entitled to receive with, [and]

on the other, the authorities' desire to protect the democratic debate and process from distortion by powerful financial groups with advantageous access to influential media." The Court said that bans on political speech may be upheld if the government can meet the requirement of proportionality when balanced with the necessity of the regulation as opposed to the freedom of speech rights threatened under Article 34 of the ECHR. For the Court, in the case at hand, other media remained open to the applicant; a factor which is "key to the proportionality of a restriction." Alternative media included radio or television programs of a political nature, print media, the Internet (including social media), demonstrations, posters and flyers, which remained powerful communication tools for the NGO in achieving its objective. Having analyzed these alternatives, the Court ruled that the ban did not amount to a disproportionate interference with the applicant's right to freedom of expression under Article 10 of the ECHR. More info [here](#).

Mouvement Raëlien Suisse v. Switzerland (2012). In this case, the ECtHR held that the ban by the Swiss authorities of the posters of an association did not constitute a violation of their right to freedom of expression and that it had not breached their right to freedom of religion. The applicant requested authorization from the local authorities of the city of Neuchâtel to run a poster campaign featuring phrases such as "The Message from Extraterrestrials" and "Science at last replaces religion," however, the local authorities denied such authorization citing previous refusals on grounds of public order and immorality. The Court held that the Swiss authorities acted within their margin of appreciation and thus that there were no serious reasons to substitute the Federal Court Assessment with its own. More info [here](#).

Verein Gegen Tierfabriken Schweiz (Vgt) v. Switzerland (No. 2) (2009). In this landmark case, the ECtHR held that Switzerland violated an organization's right to freedom of expression by failing to ensure that a commercial on animal protection

was aired on television. The case had previously come before the Court, which had held that there was a violation of the right as the refusal to air the commercial was not "necessary in a democratic society." After the organization was still unable to air the commercial, it approached domestic courts, seeking to reopen the proceedings to ensure compliance with the Court's order. The Court held that Switzerland had failed to fulfill its positive obligations to deploy available resources to allow the broadcast of the television commercial. In particular, it emphasized that, under Article 46 of the ECHR, "a respondent State found to have breached the Convention or its Protocols is under an obligation to abide by the Court's decisions" and that the reopening of proceedings can serve to ensure the execution of judgments and the addressing of the violation. The Court also noted that the nature of the commercial being unpleasant was irrelevant: "freedom of expression is applicable not only to 'information' or 'ideas' that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb." Accordingly, the ECtHR found a violation of Article 10 of the ECHR. More info [here](#).

Cyprus v. Turkey (2001). In this case, the Court held that Turkey had violated the rights to freedom of expression of residents of Northern Cyprus by censoring schoolbooks in the unrecognized territory of the Turkish Republic of Northern Cyprus. Cyprus brought numerous applications to international bodies, seeking declarations that Turkey had violated rights protected in the ECHR through their military operations and occupation of the region. The ECtHR rejected the arguments that the right to freedom of expression was infringed by Turkey's failure to provide information to relatives of missing persons, finding that this conduct was sufficiently addressed through a finding of the violation of other rights, and held that there was insufficient evidence of broad censorship of books and restrictions on access to Greek-language newspapers. However, the censorship included topics relevant to Cypriot history

and culture, and did constitute a violation of the right to freedom of expression. More info [here](#).

The Sunday Times v. United Kingdom (No. 2) (1991). The ECtHR held that the injunction against the publication of a book violated Article 10 of the ECHR. The publication of Peter Wright's book *Spycatcher* was initially met with injunctions due to the information contained in the book on the officers of the British Security Service, yet reversed after the book was published in the US. The Court reasoned that injunctions can be rendered useless due to publications in other countries, where jurisdiction does not extend to cover their publications. More info [here](#).

Handyside v. United Kingdom (1976). The ECtHR held that the confiscation of a book deemed to be obscene did not violate the right to freedom of expression. Handyside purchased the British rights to a book that aimed to educate teenage readers about sex (including on issues such as masturbation, pornography, homosexuality, abortion, etc.) and was convicted of possessing obscene publications for gain under the Obscene Publications Act. The Court concluded that the Act's intent to protect minors, as well as its measured and precise application, met the qualifications for a restriction on free speech within a State's margin of appreciation to determine what was "necessary in a democratic society." More info [here](#).

Another relevant case on this topic is *The Sunday Times v. United Kingdom* (1979). However, it has been included in other sections of this paper.

xiii. Subsequent liability/civil and criminal defamation

Medžlis Islamske Zajednice Brčko v. Bosnia and Herzegovina (2017). The ECtHR ruled that there had been no violation of Article 10 by the national courts in finding that four NGOs had damaged the reputation of M.S., a candidate for director of a public radio station, because they had failed to verify the

truthfulness of allegations contained in a letter they sent to local government offices. The Court carried out a comprehensive analysis in considering whether the national courts' interference was necessary in a democratic society, in that it was justified and proportionate and, subsequently, whether a fair balance between the applicants' Article 10 rights and M.S.'s Article 8 rights had been struck. In particular, the Court reasoned that: the fact that the allegations were contained in a private letter to a limited number of people did not eliminate the potential harmful effect while their subsequent publication had the potential to aggravate that harm; the applicants, like the press, were required to verify the veracity of their allegations; and the order awarding joint damages against the applicants and requiring them to retract the letter within fifteen days was not disproportionate. More info [here](#).

Lindon and others v. France (2007). The ECtHR held in the present case that the conviction for defamation against the author and publisher of a novel, as well as the conviction of the publication director of a daily newspaper, who cited *in extenso* the passages found to be defamatory by the French authorities, did not constitute a violation to their right to freedom of expression. The novel in question, "Jean-Marie Le Pen on Trial," portrayed a specific image of the French politician Jean-Marie Le Pen, his party, and their conduct, which could potentially harm their reputation and honor. The Court found that the interference of the three applicants' right to freedom of expression was necessary in a democratic society to protect the rights and reputation of Le Pen and the Front National. More info [here](#).

Kyprianou v. Cyprus (2005). The ECtHR held Cyprus responsible for violating the ECHR after convicting a lawyer for contempt of court. The lawyer was sentenced to five days' imprisonment after a court found that his cross-examination of a witness was contemptuous. After challenging the conviction in domestic courts, the lawyer approached the ECtHR, which held that the conviction was disproportionate.

The Court emphasized that the sanction would have a “chilling effect, not only on the particular lawyer concerned but on the profession of lawyers as a whole” and that it not only violated the lawyer’s right to freedom of expression but also the client’s right to a fair trial. More info [here](#).

Nilsen v. Norway (1999). The ECtHR held that Norway had violated Article 10 of the ECHR by finding two police officers liable for defamation. The police officials had responded to the publication of a series of reports and articles alleging police abuse and accused the author of the reports of being dishonest. Domestic courts held that the officials’ statements were defamatory of the author. The ECtHR found that the statements were value judgments expressing their opinions and that there was circumstantial evidence to support their statements. The Court concluded that the statements did not go beyond the boundaries of acceptable criticism under Article 10 of the ECHR and that they had been made in the context of a heated public debate in which there was no room for reformulating the message. The Court held that the interference in the officers’ rights was disproportionate to the legitimate aim of protecting the reputation and rights of others. More info [here](#).

Janowski v. Poland (1999). The ECtHR ruled that Poland had not violated the applicant’s freedom of expression by penalizing the applicant in a criminal procedure for insulting the municipal guards by calling them “oafs” and “dumb.” Janowski, a journalist, intervened in an incident where municipal guards were ordering street vendors to leave a square (where selling was not allegedly authorized), by informing the guards that their actions had no legal basis and infringed vendors’ fundamental rights. The applicant was subsequently charged with having insulted municipal guards on duty. The ECtHR found that there was no violation of Article 10 of the ECHR as the applicant insulted the guards in a public place, in front of a group of bystanders, while they were carrying out their duties. The actions of the guards did not warrant resort to

offensive and abusive verbal attacks and therefore, the domestic courts had sufficient reasons for the conviction. More info [here](#).

Grigoriades v. Greece (1997). In this decision, the Court held that the conviction of an officer for the crime of insult to the army had violated his right to freedom of expression, as enshrined in Article 10 of the ECHR. The applicant was a conscripted probationary reserve officer, who had served his regular time in the army service but, due to a disciplinary penalty, was ordered to serve additional time in the military. In response, he sent a letter to his superior stating he would not return to the army on the ground that the army was “an apparatus opposed to man and society” and further “a criminal and terrorist apparatus.” He was tried for desertion and insult of the army. The national courts convicted him for insulting the army but dropped the charges of desertion. The ECtHR found that the applicant did not insult anyone specifically, but that his remarks were part of the context of a general and lengthy discourse critical of the army as an institution. Moreover, he neither published the letter nor disseminated it. Thus, there was a violation of the applicant’s right to freedom of expression under Article 10 of the ECHR. More info [here](#).

Other relevant cases on these topics are *Selahattin Demirtaş v. Turkey (No. 2)* (2020), *Selahattin Demirtaş v. Turkey (No. 2)* (2020), *Bédât v. Switzerland* (2016), *Couderc v. France* (2016), *Pentikäinen v. Finland* (2015), *Delfi AS v. Estonia* (2015), *Kudrevičius and others v. Lithuania* (2015), *Perinçek v. Switzerland* (2015), *Morice v. France* (2015), *Stoll v. Switzerland* (2007), *Pedersen v. Denmark* (2004), *Cumpăna and Mazare v. Romania* (2004), *Perna v. Italy* (2003), *Bladet Tromsø and Stensaas v. Norway* (1999), *Dalban v. Romania* (1999), *Gerger v. Turkey* (1999), *Sürek v. Turkey (No. 1)* (1999), *Ceylan v. Turkey* (1999), *Polat v. Turkey* (1999), *Okçuoğlu v. Turkey* (1999), *Arslan v. Turkey* (1999), *Sürek and Özdemir v. Turkey* (1999), *Incal v. Turkey* (1998), *Bowman v. The United Kingdom* (1998), and *Zana v. Turkey* (1997). However, they have been included in

other sections of this paper, as they apply to other issues as well.

xiv. Freedom of religion

Fernández Martínez v. Spain (2014). The ECtHR found that Spain did not violate Article 8 of the ECHR when it did not renew a former priest's contract to teach religion and ethics in a public school after a local newspaper identified him as a married priest and member of a celibacy movement. The Court reasoned that the interference with the priest's right to respect for private and family life was not disproportionate, especially when he had placed himself in a situation that was incompatible with the Church's precepts. Although the ECtHR recognized that various Convention articles, in particular Articles 8, 9, 10 and 11, were relevant for the assessment of the case, in its view, the main issue laid in the non-renewal of the contract, and as a result, the application was examined under Article 8 of the Convention. More info [here](#).

S.A.S. v. France (2014). The ECtHR unanimously ruled that a French law which prohibited the wearing of clothing that covered the face while in public spaces was not a violation of the protected rights enshrined in the ECHR. The case was brought by a French citizen and devout Muslim who sued the French government for passing the law in question. The ECtHR found no violations of Articles 8, 9, 10, and 14 of the ECHR. The Court found that such law had the legitimate aim of ensuring the respect for the minimum requirements of life in society, namely, the French principle of "living together" and recognized that countries have a wide margin of appreciation when regulating such matters. More info [here](#).

Şahin v. Turkey (2005). In February 1998, Istanbul University informed students and faculty that students wearing headscarves and having long beards would not be permitted to enter lectures and examinations. Leyla Şahin was in her fifth year of medical school at Istanbul University at the time, and she was subsequently

denied entrance to lecture halls and prohibited from taking exams because of her headscarf, which she wore according to her religious beliefs. Şahin brought a suit against Turkey, claiming it had violated her right to education by denying her the right to religious expression. Ultimately, Istanbul University was found to be within its right to enact a headscarf ban, and Turkey was found not to have violated Şahin's right to education when it upheld the ban. More info [here](#).

Another relevant case on this topic is *Mouvement Raëlien Suisse v. Switzerland (2012)*. However, it has been included in other sections of this paper.

xv. Privacy

Barbulescu v. Romania (2017). The ECtHR held Romania responsible for having failed in its obligations to protect an individual's right to privacy when it didn't strike a fair balance between the applicant's rights and the rights of his employer. The applicant had been dismissed from his job at a private company after disciplinary proceedings in which his instant messaging communications sent from a workplace computer were read by the employer in order to corroborate that he had used the company's property for personal purposes. The applicant brought a complaint before domestic courts claiming that his dismissal was unlawful given that his employer had violated his right to privacy by illegally monitoring his private communications. The Court reasoned that domestic courts had not properly considered all relevant elements and had therefore failed to strike a fair balance between the applicant's and employer's rights. Thus, it concluded that Romania had not afforded adequate protection to the applicant's right to respect for his private life and correspondence under Article 8 of the ECHR. More info [here](#).

El-Masri v. the Former Yugoslav Republic of Macedonia (2012). The ECtHR held that Macedonia violated Articles 3, 5, 8 and 13 of the ECHR when it unlawfully detained a German national, subjected him

to physical abuse and interrogation, handed him over to the U.S. for continued mistreatment, and refused to carry out a proper investigation into the circumstances. The Court reasoned that the Macedonian authorities had subjected the Applicant to inhuman and degrading treatment by holding him in a hotel in a state of stress and anguish for the purpose of extracting a confession and were “directly responsible” for the CIA’s subsequent torture of the Applicant because its officials had “actively facilitated and failed to prevent [...] operations.” Further, because the Macedonian authorities “actively facilitated his subsequent detention in Afghanistan,” Macedonia was responsible for the entirety of EL-Masri’s detention, both in Skopje and then in Afghanistan. In considering breaches of Articles 3 and 5, the Court said that these included failures to carry out an effective investigation of the Applicant’s allegations. It reasoned that the prosecuting authorities of the State should have endeavored to undertake an adequate investigation and that their failure to do this had an impact on the right to truth about the circumstances of the case, rendering the case important not only for the Applicant and his family, but also for other victims of similar crimes and the general public who had the right to know what had happened. More info [here](#).

Von Hannover v. Germany (No. 2) (2012).

The ECtHR found that two photographs depicting a royal family on holiday and published in two German newspapers violated the right to privacy pursuant to Article 8 of the ECHR because they did not reflect any matter of public interest detailed in the accompanying text. However, a third photograph depicted a Prince in poor health, and since the health of the Prince was a matter of public concern the ECtHR found no violation of Article 8. In reaching its ruling, the ECtHR set out the criteria which domestic courts should follow when balancing the right to privacy pursuant to Article 8 against the right to freedom of expression under Article 10. First, whether the information contributes to a debate of general interest; second, how well known is the person concerned and the subject matter of the report; third, the prior conduct of the person concerned; fourth, content, form and consequences of the publication; and fifth, the circumstances in which the photos were taken. More info [here](#).

Final note. At the moment of publication of this paper, the following cases—which deal with certain aspects concerning Article 10 of the ECHR—are still pending before the Grand Chamber of the ECtHR: *Halet v. Luxembourg* (no. 21884/18); *Hurbain v. Belgium* (no. 57292/16); and *Sanchez v. France* (no. 45581/15).

Appendix

List of all the cases examined and included in this paper:

Judgments of the European Court			
1	<i>Magyar Helsinki Bizottság v. Hungary</i> (2016)	34	<i>Sanoma Uitgevers B.V. v. The Netherlands</i> (2010)
2	<i>Fressoz and Roire v. France</i> (1999)	35	<i>Stoll v. Switzerland</i> (2007)
3	<i>Gillberg v. Sweden</i> (2012)	36	<i>Pedersen v. Denmark</i> (2004)
4	<i>Roche v. United Kingdom</i> (2005)	37	<i>Cumpana and Mazare v. Romania</i> (2004)
5	<i>Pentikäinen v. Finland</i> (2015)	38	<i>Perna v. Italy</i> (2003)
6	<i>Kudrevičius and others v. Lithuania</i> (2015)	39	<i>Goodwin v. United Kingdom</i> (1996)
7	<i>Palomo Sánchez and Others v. Spain</i> (2011)	40	<i>Lingens v. Austria</i> (1986)
8	<i>Hashman v. United Kingdom</i> (1999)	41	<i>The Sunday Times v. United Kingdom</i> (1979)
9	<i>Magyar Kétfarkú Kutya Párt v. Hungary</i> (2020)	42	<i>Big Brother Watch and Others v. The United Kingdom (No. 2)</i> (2021)
10	<i>Karácsony and Others v. Hungary</i> (2016)	43	<i>Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland</i> (2017)
11	<i>Rekvényi v. Hungary</i> (1999)	44	<i>Bédat v. Switzerland</i> (2016)
12	<i>Bowman v. The United Kingdom</i> (1998)	45	<i>Animal Defenders International v. United Kingdom</i> (2013)
13	<i>Vogt v. Germany</i> (1995)	46	<i>Mouvement Raëlien Suisse v. Switzerland</i> (2012)
14	<i>Baka v. Hungary</i> (2016)	47	<i>Verein Gegen Tierfabriken Schweiz (Vgt) v. Switzerland (No. 2)</i> (2009)
15	<i>Wille v. Liechtenstein</i> (1999)	48	<i>Cyprus v. Turkey</i> (2001)
16	<i>Guja v. Moldova</i> (2008)	49	<i>The Sunday Times v. United Kingdom (No. 2)</i> (1991)
17	<i>Selahattin Demirtaş v. Turkey (No. 2)</i> (2020)	50	<i>Handyside v. United Kingdom</i> (1976)
18	<i>Gerger v. Turkey</i> (1999)	51	<i>Medžlis Islamske Zajednice Brčko v. Bosnia and Herzegovina</i> (2017)
19	<i>Sürek v. Turkey (No. 1)</i> (1999)	52	<i>Lindon and others v. France</i> (2007)
20	<i>Ceylan v. Turkey</i> (1999)	53	<i>Kyprianou v. Cyprus</i> (2005)
21	<i>Polat v. Turkey</i> (1999)	54	<i>Nilsen v. Norway</i> (1999)
22	<i>Okçuoğlu v. Turkey</i> (1999)	55	<i>Arslan v. Turkey</i> (1999)
23	<i>Sürek and Özdemir v. Turkey</i> (1999)	56	<i>Bladet Tromsø and Stensaas v. Norway</i> (1999)

24	<i>Incal v. Turkey</i> (1998)	57	<i>Dalban v. Romania</i> (1999)
25	<i>Zana v. Turkey</i> (1997)	58	<i>Janowski v. Poland</i> (1999)
26	<i>Perinçek v. Switzerland</i> (2015)	59	<i>Grigoriades v. Greece</i> (1997)
27	<i>Lehideux and Isorni v. France</i> (1998)	60	<i>Fernández Martínez v. Spain</i> (2014)
28	<i>Jersild v. Denmark</i> (1994)	61	<i>Şahin v. Turkey</i> (2005)
29	<i>Centro Europa 7 S.R.L. v. Italy</i> (2012)	62	<i>S.A.S. v. France</i> (2014)
30	<i>Couderc v. France</i> (2016)	63	<i>El-Masri v. the Former Yugoslav Republic of Macedonia</i> (2012)
31	<i>Delfi AS v. Estonia</i> (2015)	64	<i>Von Hannover v. Germany (No. 2)</i> (2012)
32	<i>Morice v. France</i> (2015)	65	<i>Barbulescu v. Romania</i> (2017)
33	<i>Axel Springer AG v. Germany</i> (2012)		

Endnotes

1. IACtHR, *Claude Reyes v. Chile*, Ser. C No. 151, (2006).
2. IACtHR, *Compulsory membership in an association prescribed by law for the practice of journalism*, Advisory Opinion OC-5/85 (1985).
3. UNHRC, *Gauthier v. Canada*, Communication No. 633/1995 (1999).
4. UNHRC, *Toktakunov v. Kyrgyzstan*, Communication No. 1470/2006 (2011).
5. UNHRC, *Rafael Rodríguez Castañeda v. Mexico*, Communication No. 2202/2012 (2013).





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Global Freedom of Expression
COLUMBIA UNIVERSITY

Columbia Global Freedom of Expression
Columbia University
91 Claremont Avenue, Suite 523
New York, NY 10027
Phone: 1-212-854-6785
globalfreespeech@columbia.edu