

FREEDOM OF THE PRESS AND THE PROTECTION OF ONE'S REPUTATION

(HEADS OF STATE AND GOVERNMENT, POLITICIANS AND PUBLIC FIGURES, PROFESSIONALS,
PRIVATE PEOPLE, PEOPLE ARRESTED OR UNDER CRIMINAL CONVICTION)

While its task is to impart information and ideas on political issues and on other matters of general interest, the press must nevertheless not overstep the bounds set for “the protection of the reputation of others”. According to the case-law of the European Court of Human Rights, the limits of acceptable criticism are wider with regard to a politician acting in his public capacity than in relation to a private individual. Politicians or public figures inevitably and knowingly lay themselves open to close scrutiny of their every word and deed by both journalists and the public at large. They must display a greater degree of tolerance, especially when they make public statements that are susceptible of criticism. They are entitled to have their reputation protected, even when they are not acting in their private capacity, but the requirements of that protection have to be weighed against the interests of open discussion of political issues.

Freedom of expression includes the publication of photos. This is an area in which the protection of the rights and reputation of others takes on particular importance, as the photos may contain very personal or even intimate information about an individual or his or her family. The right to the protection of one's image may imply the individual's right to control the use of that image, including the right to refuse publication thereof.

The “necessity” for any restriction on freedom of expression must be convincingly established. Any requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself. Unreasonably high damages for defamation claims can have a chilling effect on freedom of expression, and therefore there must be adequate domestic safeguards so as to avoid disproportionate awards being granted. When a statement, whether qualified as defamatory or insulting by the domestic authorities, is made in the context of a public debate, a prison sentence will be compatible with journalists' freedom of expression only in exceptional circumstances, notably where other fundamental rights have been impaired, as for example, in the case of hate speech or incitement to violence.

Heads of State or Government

Excessive measure for protecting a Head of State's reputation under the domestic law, which gave him inordinate privileges

Colombani and Others v. France –no. 51279/99

Judgment 25.9.2002

In the context of the examination of Morocco's application for membership of the European Communities, *Le Monde* published an article under the headline "Morocco: leading world hashish

¹ This document presents a non-exhaustive selection of the European Court of Human Rights' relevant case law and other CoE instruments regarding the freedom of the press and the protection of one's reputation. This information is not a legal assessment of the alerts and should not be treated or used as such.

exporter", with the sub-heading "A confidential report casts doubt on King Hassan II's entourage". Following a complaint by the King of Morocco, criminal proceedings were brought against the first applicant, publishing director of Le Monde, and the author of the article. They were found guilty of insulting a foreign head of state on the basis of the law on the freedom of the press.

The European Court of Human Rights noted that the information provided by the applicants was of legitimate public interest and they acted in good faith in supplying precise and credible information based on an official report whose accuracy did not require checking on their part. The offence provided for under the domestic law tended to confer on heads of state a status going beyond the general law and shielding them from criticism on the sole grounds of their function or status, without taking any account of the interest that lay in the criticism. For the Court, the ordinary offence of defamation would have been sufficient to protect any head of state from attacks on his honor or reputation.

Conclusion: violation of Article 10 of the Convention (freedom of expression)

Conviction of political activist for insulting French President by waving a satirical placard

**Eon v. France - [26118/10](#)
Judgment on 14.3.2013**

During a visit by the President of France in 2008, the applicant waved a small placard reading "Casse toi pov'con" ("Get lost, you sad prick") as the President's party was about to pass by. This was an allusion to a much publicised phrase uttered by the President himself. The phrase had given rise to extensive comment and media coverage and had been widely circulated on the Internet and used as a slogan at demonstrations. The applicant was immediately stopped by the police and was later prosecuted by the public prosecutor for insulting the President. He was found guilty and fined thirty euros, a penalty which was suspended.

For the European Court of Human Rights, the phrase "Casse toi pov'con" appearing on a placard waved by the applicant as the President's party was passing along the public highway was, in literal terms, offensive to the President. However, the phrase should be examined within the overall context of the case, particularly with regard to the status of the person to whom it was addressed, the applicant's own position, its form and the context of repetition of a previous statement.

The Court noted in particular that, by echoing an abrupt phrase that had been used by the President himself and had attracted extensive media coverage and widespread public comment, much of it humorous in tone, the applicant had chosen to express his criticism through the medium of irreverent satire. The Court had observed on several occasions that satire was a form of artistic expression and social commentary which, by its inherent features of exaggeration and distortion of reality, naturally aimed to provoke and agitate. Accordingly, any interference with the right of an artist – or anyone else – to use this means of expression should be examined with particular care. Imposing a criminal penalty for conduct such as that of the applicant in the present case could have a chilling effect on satirical forms of expression relating to topical issues. Such forms of expression could themselves play a very important role in the free discussion of questions of public interest, without which there was no democratic society. Accordingly, for the Court, the competent authorities' recourse to a criminal penalty had been disproportionate to the aim pursued and unnecessary in a democratic society.

Conclusion: violation of Article 10 (freedom of expression)

See, for more examples of case law on unnecessary/disproportionate use of criminal law in defamation cases related to Heads of State or Government,

- **Otegi Mondragon v. Spain** –no. [2034/07](#), Judgment 15.3.2011 [Criminal conviction for insulting the King]: violation of Article 10 (freedom of expression)
- **Tuşalp v. Turkey** no. [32131/08](#), Judgment 21.2.2012 [Criminal conviction for defamation for having published two articles criticising the Prime Minister]: violation Article 10 (freedom of expression) **Stern**
- **Taulats and Roura Capellera v. Spain** no. [51168/15](#) [conviction of two Spanish nationals for setting fire to a photograph of the royal couple at a public demonstration held during the King's official visit to Girona in September 2007] Judgment 13.3.2018: Violation of Article 10

Politicians and other public figures

Failure of domestic courts to make distinction between facts and value judgments regarding the obligation to prove the veracity of alleged tarnishing statements

OOO Izdatelskiy Tsentri Kvartirnyy Ryad v. Russia [39748/05](#)
Judgment 25 April 2017

The applicant company, OOO Izdatelskiy Tsentri Kvartirnyy Ryad, is a publishing company incorporated under Russian law based in Moscow. At the relevant time it was the publisher of Kvartirnyy Ryad, a newspaper covering the housing market in the Moscow area. The company complained that its freedom of expression had been violated when it was made liable for defamation in 2004. The newspaper had published an article about the administration of a large common hold association, Bluebird. It reported that local residents had brought complaints against the head of the association, T. It also asked whether T.'s role as the deputy head of a district council was compatible with his commercial business activity. T. successfully sued the company for defamation, and it was ordered to pay damages of 10,000 Russian roubles (around 270 euros). The company appealed, but it was unsuccessful. It relied on Article 10 (freedom of expression) to complain that the judgments had unduly restricted its right to freedom of expression, arguing that the article had contributed to a debate of public interest.

The European Court of Human Rights considered that the criticism contained in the article was not directed at T.'s private activities but rather at his conduct in his capacity as head of the commonhold association in Moscow, that is, a representative of the interests of a group of flat owners vested with their trust. As such, his activities in that capacity were clearly of legitimate concern if not to the general public then to the readership of the specialist newspaper which at the material time covered housing matters in the Moscow-area. The fact that the same person was also a public official could only increase the degree of legitimate public concern in his actions, in view of the possible corruption implications. Also, in the Court's view, the Russian courts did not seem to have recognised that the proceedings in the present case involved a conflict between the right to freedom of expression and the protection of reputation. It did not appear that they carried out an analysis of whether or not the contested publications sought to make a contribution to a debate on matters of general interest or public concern.

Moreover, the domestic courts had failed to make a distinction between statements of fact and value judgments. They interpreted the statements as factual and required the applicant company to prove the veracity of the allegedly tarnishing statement. The Court points out in this connection the deficiency in Russian law on defamation referring uniformly to "statements" and positing the assumption – as the present case illustrates – that any such "statement" is amenable to proof in civil proceedings. In this connection it recalled that, **while the existence of facts can be demonstrated, the truth of value**

judgments was not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 of the Convention.

The Court concluded that the interference with the applicant company's right to freedom of expression cannot be said to have been "necessary in a democratic society".

Conclusion: violation of Article 10 (freedom of expression) of the Convention

Finding of liability against publishers of article and photographs revealing existence of monarch's secret child

Couderc and Hachette Filipacchi Associés v. France [GC] - [40454/07](#)

Judgment 10.11.2015

The applicants are, respectively, the publication director of the weekly magazine *Paris Match* and the company which publishes the magazine. On 6 May 2005 *Paris Match* published an article in which Ms C. gave details about how she had met the reigning prince of Monaco, their meetings, their intimate relationship and feelings, the way in which the Prince had reacted to the news of Ms C.'s pregnancy and his attitude on meeting the child. The Prince brought proceedings against the applicants, seeking compensation for invasion of privacy and infringement of his right to protection of his own image. The French courts granted his request, awarding him EUR 50,000 in damages and ordering that details of the judgment be published across one third of the magazine's front cover.

In the Court's view, this case did not simply concern a dispute between the press and a public figure; the interests of Ms C. and the child had also been at stake. The child's mother had supplied information to the press and had played a pivotal role in the publication of the article in question. She had used the press to draw public attention to the situation of her child, who had been born outside marriage and had not yet been formally recognised by his father. Even though, under the Constitution of Monaco as it currently stood, the child in question could not succeed his father to the throne, his very existence was apt to be of interest to the public and in particular to the citizens of Monaco. In a hereditary constitutional monarchy like the Principality of Monaco, the birth of a child had special significance. Accordingly, the requirements of the protection of the Prince's private life and the debate on the future of the hereditary monarchy had been in competition. As this was an issue of political significance, the Court found that the public had had a legitimate interest in knowing of the child's existence and being able to conduct a debate on the possible implications for political life in the Principality of Monaco. The Court observed that the material published has also included elements relating exclusively to the private, or even intimate, life of the Prince and Ms C. However, the Court pointed out that it was not just the Prince's private life that had been at stake, but also that of the child's mother and the child himself. It was difficult to see how the private life of one person – in this instance the Prince – could act as a bar to the claims of another person – his son – seeking to assert his existence and have his identity recognised. The Court noted that Ms C. had consented to publication on her own behalf and that of her son and that it was she who had taken the initiative to inform the press. The photographs accompanying the article had not been taken without the Prince's knowledge; on the contrary, they had been taken by the child's mother in the privacy of an apartment. The Court considered that the fact that the interview had been initiated by the child's mother and that she had handed over the photographs to the magazine of her own free will was an important factor to be taken into consideration in balancing the protection of private life against freedom of expression. The Court noted that the issue of *Paris-Match* of 5 May 2005, of which over a million copies had been printed, had certainly had significant repercussions, but that the information it contained had no longer been confidential since the *Daily Mail* and *Bunte* had

reported on it or published extracts from it in the preceding days. Lastly, the Court noted that the article in *Paris-Match* had not made any defamatory allegations and that the Prince had not disputed the truth of the disclosures contained in it.

The Court concluded that, in disclosing the information, Ms C. had sought to secure public recognition of her son's status and of the fact that the Prince was his father, which were crucial factors in ending the secrecy surrounding him.

Conclusion: violation of Article 10 (freedom of expression)

Refusal of the German courts for an injunction preventing any further publication of photographs of a private nature

Von Hannover v. Germany - [no. 59320/00](#)

Judgment on 24 June 2004

The applicant, Princess Caroline von Hannover, had applied to the German courts for an injunction preventing any further publication of two series of photographs relating to her private life which had appeared in German magazines, on the ground that they infringed her right to protection of her private life and of her own image.

The Court held that, by rejecting her claims, the German courts had not struck a fair balance between the interests at stake. It observed in particular that, while the general public might have a right to information, including, in special circumstances, on the private life of public figures, they did not have such a right in this case. The Court considered that the general public did not have a legitimate interest in knowing the applicant's whereabouts or how she behaved generally in her private life even if she appeared in places that could not always be described as secluded and was well known to the public. Even if such a public interest existed, just as there existed a commercial interest for the magazines to publish the photographs and articles, those interests had, in the Court's view, to yield to the applicant's right to the effective protection of her private life. Hence everyone, including people known to the public, had to have a "legitimate expectation" that his or her private life would be protected. In the Court's view, the criteria that had been established by the domestic courts for distinguishing a figure of contemporary society "par excellence" from a relatively public figure were not sufficient to ensure the effective protection of the applicant's private life and she should, in the circumstances of the case, have had a "legitimate expectation" that her private life would be protected.

Conclusion: violation of Article 8 (right to respect for private life)

Refusal of the German courts to prohibit any further publication photographs taken during a public figure's holiday

Von Hannover v. Germany (no. 2) - [nos. 40660/08 and 60641/08](#)

Judgment on 7 February 2012

The applicants, Princess Caroline von Hannover and her husband Prince Ernst August von Hannover, complained of the German courts' refusal to prohibit any further publication of two photographs which had been taken during their holiday without their knowledge and which had appeared in two German magazines. They alleged in particular that the domestic courts had not taken sufficient account of the European Court's 2004 judgment in *von Hannover v. Germany* (see above).

The Court held that the German courts had carefully balanced the right of the publishing companies to freedom of expression against the right of the applicants to respect for their private life. In doing so, they had attached fundamental importance to the question whether the photographs, considered in the light of the accompanying articles, had contributed to a debate of general interest. They had also examined the circumstances in which the photographs had been taken. The Federal Court of Justice had changed its approach following the first European Court's *von Hannover* judgment in 2004 (see above), while the Federal Constitutional Court, for its part, had not only confirmed that approach, but had also undertaken a detailed analysis of the European Court's case-law in response to the applicants' complaints that the Federal Court of Justice had disregarded the Convention and the European Court's case-law. In those circumstances, and having regard to the margin of appreciation enjoyed by the national courts when balancing competing interests, the Court concluded that the latter had not failed to comply with their positive obligations under Article 8 of the Convention in the present case.

Conclusion: no violation of Article 8 (right to respect for private life)

Refusal of the German courts to grant an injunction prohibiting any further publication of a photograph taken during public figures' holiday without their knowledge

Von Hannover (no. 3) v. Germany [n° 8772/10](#)

Judgment on 19 September 2013

This case concerns a complaint lodged by Princess Caroline von Hannover relating to the refusal of the German courts to grant an injunction prohibiting any further publication of a photograph of her and her husband taken without their knowledge while they were on holiday. The photograph was accompanied by an article about the trend amongst the very wealthy towards letting out their holiday homes.

The Court held that the German courts had taken into consideration the essential criteria and the Court's case-law in balancing the different interests at stake in the case. It observed in particular that it could not be asserted that the article in question had merely been a pretext for publishing the photograph in issue or that the connection between the article and the photograph had been purely contrived. The characterisation of the subject of the article as an event of general interest, first by the Federal Constitutional Court and then by the Federal Court of Justice, could not be considered unreasonable. The Court could therefore accept that the photograph in question had made a contribution to a debate of general interest.

Conclusion: no violation of Article 8 (right to respect for private life)

Publication of a picture of a Deputy Prime Minister half-overlapped by the face of a right-wing politician

Schüssel v. Austrian [n° 42409/98](#)

Decision on 21.2.2002

Relying on Article 8 (right to respect for private life) of the Convention, the applicant, the Deputy Prime Minister of Austria, complained in particular about the use of his picture on stickers, half-overlapped by the face of the right-wing politician Jörg Haider and with the following slogan: "The social security slashers and the education snatchers share a common face".

The Court declared the application manifestly ill-founded. It found that the Austrian Supreme Court had correctly weighed the general interest in an open political debate as protected by Article 10 (freedom of expression) of the Convention against the applicant's interest in protection against the publication of his picture. It recalled that the limits of acceptable criticism were wider with regard to a politician than with regard to a private individual.

Conclusion: inadmissible

Order requiring a magazine to issue a statement explaining that a photograph of a murdered prefect had been published without the family's consent

Hachette Filipacchi Associés v. France [n° 71111/01](#)
Jugement on 14.6.2007

A few days after the murder of a French prefect, the weekly magazine *Paris Match* published an article entitled "La République assassinée" (The Murdered Republic). A two-page colour photograph taken moments after the murder showed the prefect's lifeless body lying on the ground in a pool of blood, facing the camera. The prefect's widow and children, relying on their right to respect for their private life, lodged an urgent application with the courts seeking the seizure of the copies of any magazines in which the photograph appeared and prohibition of their sale on penalty of fines. The applicant company complained of the order requiring it, subject to a penalty for non-compliance, to publish a statement that the photograph of the prefect had been published without his family's consent.

The Court held that the order requiring *Paris Match* to publish a statement, for which the French courts had given reasons which were both relevant and sufficient, had been proportionate to the legitimate aim it pursued – to protect of the rights of others –, and therefore necessary in a democratic society. The Court observed in particular that the result of publication of the photograph in question, in a magazine with a very high circulation, had been to heighten the trauma felt by the victim's close relatives, so they were justified in arguing that there had been an infringement of their right to respect for their private life. Then examining to what extent the punishment might have a dissuasive effect on exercise of freedom of the press, the Court noted that the French courts had refused to order the seizure of the offending publications and found that, of all the sanctions permitted, the order to publish the statement was that which, both in principle and as regards its content, least restricted the exercise of the applicant company's rights.

Conclusion: no violation of Article 10 (freedom of expression)

Injunction prohibiting broadcaster from showing the picture of a convicted neo-Nazi once he had been released on parole

Österreichischer Rundfunk v. Austria [n° 35841/02](#)
7 December 2006

In 1999 the applicant (the Austrian Broadcasting Corporation) broadcast information about the release on parole of the head of a neo-Nazi organisation who had been sentenced under the National Socialist Prohibition Act. That news item also mentioned his deputy, who had previously been convicted under the Act and had been released on parole five weeks earlier. During the broadcast, a picture of the deputy at his trial was shown for a couple of seconds. The deputy successfully brought proceedings under the Copyright Act and the applicant's rights to publish the deputy's picture were restricted. The applicant complained that the Austrian courts' decisions violated its right to freedom of expression. It

further complained that the contested injunction prohibited it from publishing the picture while other media remained free to do so.

The Court found that the reasons adduced by the domestic courts had not been relevant and sufficient enough to justify imposing the injunction, and that the interference with the applicant's rights could not be considered necessary in a democratic society. When weighing the individual's interest not to have his physical appearance disclosed against the public's interest in the publication of his picture, the domestic courts had in particular not taken into account the deputy's notoriety and the political nature of the crime of which he had been convicted. Nor had they had regard to other important elements, namely that the facts mentioned in the news items were correct and complete and that the picture shown was related to the content of the report. In addition, the injunction in issue had only applied to the applicant and other media had remained free to publish the deputy's picture in the same context.

Conclusion: violation of Article 10 (freedom of expression) of the Convention

See also, for more examples,

- **Falzon v. Malta** - [45791/13](#) [Conviction for defamation on account of journalistic statements presented in a question format and treated as statements of fact by domestic courts] Judgment 20.3.2018: violation
- **Kaçki v. Poland** no. [10947/11](#) Judgment 4 July 2017 [Disproportionate recourse to criminal prosecution resulting in a finding of a criminal responsibility for alleged defamation of a member of the European Parliament]: violation
- **Murat Vural v. Turkey** –no. [9540/07](#) Judgment 21.10.2014 [Thirteen years' imprisonment for pouring paint over statues of Atatürk]: violation
- **Tuşalp v. Turkey** no. [32131/08](#), Judgment 21.2.2012 [Criminal conviction for defamation for having published two articles criticising the Prime Minister]: violation
- **Cumpănă and Mazăre v. Romania** - [33348/96](#), Judgment 17.12.2004 [Unnecessary and disproportionate use of criminal law in a classic defamation case]: violation

Professionnels (civil servants, lawyers, journalists etc)

Discrimination. Refusal to prosecute for joke made during television comedy show about homosexual celebrity referred to as a "female"

Sousa Goucha v. Portugal - [70434/12](#)
Judgment on 22.3.2016

During a live television comedy show, a joke was made about the applicant, a well-known homosexual TV host, who was referred to as a "female". His criminal complaint for defamation against the television and production companies, the presenter and the directors of programming and content was dismissed by the domestic courts.

The Court noted that, as sexual orientation was a profound part of a person's identity, and gender and sexual orientation were two distinctive and intimate characteristics, any confusion between the two would constitute an attack on one's reputation. A State's obligation under Article 8 to protect an

applicant's reputation might arise where the statements went beyond the limits of what was considered acceptable under Article 10 (freedom of expression).

As the alleged violation stemmed in the current case from the authorities' refusal to prosecute, the main issue was whether the State, in the context of its positive obligations, had achieved a fair balance between the applicant's right to protection of his reputation and the other parties' right to freedom of expression guaranteed by Article 10. The instant case was distinguishable from the previous cases concerning a satiric form of artistic expression, as the joke had not been made in the context of a debate of public interest and, as such, no matters of public interest were at stake. When dismissing the applicant's complaint, the domestic courts had convincingly established the need for placing the protection of the defendants' freedom of expression above the applicant's right to protection of his reputation. In particular, they had taken into account the playful and irreverent style of the show and its usual humour, the fact that the applicant was a public figure, as well as the defendants' lack of intent to attack the applicant's reputation or to criticise his sexual orientation. According to the domestic courts, a reasonable person would not have perceived the joke as defamation because it referred to the applicant's characteristics, his behaviour and way of expressing himself. A limitation on the television show's freedom of expression for the sake of the applicant's reputation would therefore have been disproportionate under Article 10. In view of the margin of appreciation afforded to the State in that area, the domestic courts had struck a fair balance between the two conflicting rights in line with the Convention standards.

Conclusion: no violation of Article 8 (respect for private life) and 14 (prohibition of discrimination)

Alleged breach of a lawyer's privacy following publications of his photographs

Minelli v. Switzerland [n°14991/02](#)

Decision on 14 June 2005

The applicant, a well-known lawyer and journalist who had frequently taken part in public debates on topical issues, alleged a breach of his privacy because of the use of the term "poacher" in a profile of him published in a magazine. He also complained of the publication of his photograph alongside the article.

The Court declared the complaint manifestly ill-founded, endorsing the view of the Swiss Federal Court that the applicant could not claim absolute protection of his personality rights after having placed himself in the public eye. The same applied to his right to protection of his own image in relation to the photograph published alongside the article, which had been taken at a televised event in which the applicant had taken part.

Conclusion: inadmissible

See, for other relevant examples,

- ***Novaya Gazeta and Milashina v. Russia*** no. 45083/06 [Defamation proceedings against an editorial house and a journalist following the publication of two articles concerning the sinking of the Russian Navy's nuclear cruise missile submarine "Kursk" in the Barents Sea in August 2000 and the investigation into the accident] Judgment 3.10.2017 : **violation of Article 10 (freedom of expression)**
- ***Niskasaari and Others v. Finland*** no. [37520/07](#) [Disproportionate use of criminal sanction for defamation after publication of an article about a Ombudsman's removal from her functions]: violation of Article 10 (freedom of expression)

- **Mariapori v. Finland** no. [37751/07](#) [Disproportionate use of criminal convictions for defamation following the publication of a book accusing a tax expert of perjury in tax fraud proceedings]: violation
- **Kapsis and Danikas v. Greece** - [52137/12](#) Judgment 19.1.2017 [Unnecessary civil liability for newspaper article describing holder of public office as a “total unknown”]: violation
- **Ali Çetin v. Turkey** no. [30905/09](#) Judgment 19.6.2017 [Inappropriate and disproportionate use of criminal sanction for insulting a civil servant]: violation

Private people

Unreasonably high damages award in libel action: lack of adequate and effective safeguards in legislation and practice

Independent Newspapers (Ireland) Limited v. Ireland - [28199/15](#)
Judgment 15.6.2017

The applicant company is the publisher of the Irish daily newspaper, the *Herald*, previously known as the *Evening Herald*. In 2004 the *Evening Herald* published a series of articles about a public relations consultant, Ms L., reporting on rumours of an intimate relationship between her and a Government minister. Ms L. successfully sued the applicant company for defamation, and a jury awarded her damages of 1,872,000 euros (reduced to 1,250,000 euros by the Supreme Court on appeal). The applicant company complained to the European Court that the award had been excessive and had violated its right to freedom of expression.

According to the European Court of Human Rights, unreasonably high damages for defamation claims can have a chilling effect on freedom of expression, and therefore there must be adequate domestic safeguards so as to avoid disproportionate awards being granted. The Court found that the safeguards had not proved effective in this case. At first instance, this was because domestic law prevented the judge from giving the jury sufficiently specific instructions about an appropriate amount of damages for the libel. On appeal, although the award had been overturned and replaced with a lower amount after a fresh assessment, the Supreme Court had not given sufficient explanations as to how the new amount had been calculated, and it had not addressed the domestic safeguard at first instance and, in that context, the strict limits on judicial guidance to juries.

Conclusion: violation of Article 10 of the Convention (freedom of expression)

Disproportionate damage award in libel action for disclosing the identity of a female friend of a public official

Flinkkilä and Others v. Finland - [25576/04](#)
Judgment 6.4.2010

The applicants worked on two nationwide magazines which in 1997 published articles about an incident involving A., who at the time was the national conciliator. The incident had concerned an altercation between A., a female friend B., and A.’s wife that had taken place outside the matrimonial home. As a consequence, B. had been fined and A. had been given a suspended prison term and dismissed from service. He and his wife had later divorced. The first article contained an interview with A. concerning the incident, his conviction and dismissal. It mentioned B.’s full name and carried a photograph of her. The second article dealt with A.’s feelings about his divorce and dismissal and mentioned B.’s name in

connection with the incident. Following a complaint by B., criminal proceedings were brought against the applicants, who were ultimately convicted and ordered to pay a fine and compensation.

The Court first noted that, even though B. was a private person, through her involvement in a widely publicised incident in front of a public figure's house, she had inevitably entered the public domain. Moreover, her active involvement in the incident leading to A.'s dismissal and divorce had created a continuing element of public interest in her. The information in the two articles had mainly focused on A.'s behavior and was voluntarily disclosed by him in the course of an interview. No details of B.'s private life were mentioned, except for her involvement in the incident and the fact that she was A.'s friend, both circumstances which were already common knowledge before the publication of the impugned articles. Notwithstanding that the event may have been presented in a somewhat colorful manner in order to boost sales of the magazines that fact in itself could not suffice as justification for the applicants' convictions. Finally, given that B. had already been awarded amounts in respect of non-pecuniary damage for the disclosure of her identity in a television program and in respect of other articles published in other magazines stemming from the same facts, the penalties imposed on the applicants had been disproportionate.

Conclusion: violation of Article 10 of the Convention

Order for a blacking-out of photographs of a young man held captive and tortured

Société de Conception de Presse et d'Édition v. France - no. 4683/11

Judgment on 25.02.2016

The case concerned the unauthorised publication by the magazine *Choc* of a photograph of a young man taken by his torturers while he was in captivity.

The Court noted that the article as a whole, which concerned a court case and crimes that had been committed, had contributed to a debate of general interest. It further observed that the photograph, which had not been intended for public viewing – despite being shown briefly during a television program – had been published without the permission of the victim's relatives. The Court reiterated in that regard the importance it attached to journalists' assumption of their ethical duties and responsibilities. It also shared the domestic courts' view that publication of the photograph had shown a grave disregard for the grief of the young man's family, in other words for the privacy of his mother and sisters. The Court stressed that journalists were required to take into account the impact of the information and pictures which they published, especially where these were liable to adversely affect the private and family life of other persons, protected by Article 8 of the Convention.

The Court considered that in merely ordering the photograph to be blacked out and taking no action in relation to the text of the report or the other photographs accompanying it, the Paris Court of Appeal had ensured respect for the publication as a whole. Lastly, the Court considered that, in view of the circumstances of the case and the interference with the private life of the victim's relatives, the penalty imposed had not been liable to have a chilling effect on freedom of expression.

Conclusion: no violation of Article 10 (freedom of expression)

Obligation to pay compensation to child victim of sexual abuse for revealing her identity in a newspaper article

Kurier Zeitungsverlag und Druckerei GmbH (no. 2) v. Austria and Krone Verlag GmbH v. Austria
[n° 3401/07](#)

19 June 2012

The two cases concerned compensation proceedings under the Media Act brought by a mother and child against two publishing companies on account of their newspapers' reporting on the dispute between the parents over custody of the child. The articles published by the two newspapers revealed the child's identity and gave details of his family life, and were accompanied by photographs showing him in a state of apparent pain and despair.

The Court held that it was true that the articles had dealt with a matter of public concern. However, given that neither the child nor his parents were public figures or had previously entered the public sphere, it had not been essential for understanding the case to disclose his identity, reveal most intimate details of his life or publish a picture from which he could be recognised. The Court was not convinced by the applicants' arguments that it had been necessary to publish a picture showing the child's suffering in order to draw public attention to the issue or to ensure the credibility of the story. Lastly, the interference with the applicants' rights had been proportionate to the aims pursued. They had not been fined in criminal proceedings but had simply been ordered to pay compensation to the child for the injury caused due to interference with his right to respect for his strictly private life.

Conclusion: no violation of Article 10 (freedom of expression)

Disclosure in the media of footage from a closed-circuit television camera mounted in the street

Peck v. the United Kingdom [n° 44467/97](#)

Judgment on 28 January 2003

The applicant, who was suffering from depression, complained about the disclosure in the media of footage from a closed-circuit television (CCTV) camera mounted in the street showing him walking alone with a kitchen knife in his hand, which had resulted in images of himself being published and broadcast widely. He further complained of the lack of an effective domestic remedy in that regard.

The Court found that the disclosure of the footage by the municipal council had not been accompanied by sufficient safeguards and constituted disproportionate and unjustified interference with the applicant's private life. Furthermore, at the relevant time, the applicant had not had an effective remedy for breach of confidence.

Conclusion: violation of Article 8 (right to respect for private life) and 13 of the Convention (right to an effective remedy)

Photographing of a newborn baby without prior agreement of parents and retention of the negatives

Reklos and Davourlis v. Greece [n° 1234/05](#)

15 January 2009

This case concerned the taking of photographs of a new-born baby in a private clinic without the parents' prior consent, and the retention of the negatives. Immediately after birth the baby had been placed in a sterile unit to which only medical staff at the clinic had access. The following day the mother

was presented with two photographs of the baby, shown facing the camera, taken inside the sterile unit by a professional photographer based in the clinic. The applicants complained of the photographer's intrusion into an environment to which only medical staff should have had access, and the possible annoyance caused to the infant by being photographed from the front. Faced with the clinic's indifference to their complaints and its refusal to hand over the negatives of the photographs, the applicants brought an action for damages, which was dismissed as unfounded.

The Court held that, although the photographs showed the baby only from the front and not in a state which could be considered demeaning or was otherwise liable to damage his personality, the overriding consideration in this instance was not whether the photographs were harmless but the fact that the photographer had kept them without obtaining the applicants' consent. The baby's image had thus been retained in the hands of the photographer in an identifiable form with the possibility of subsequent use against the wishes of the child and/or his parents. The domestic courts had not taken into account the lack of parental consent for the photographs to be taken or for the negatives to be kept by the photographer and had thus failed sufficiently to guarantee the child's right to the protection of his private life.

Conclusion: violation of Article 8 (right to respect for private life)

Persons arrested or under criminal prosecution

Journalists contacted by police and allowed to film applicant in police custody with a view to broadcasting the images

Toma v. Romania n° [42716/02](#)

24 February 2009

The police had called journalists and allowed them to take pictures, with a view to publication, showing the applicant in police custody after he and another individual had been arrested by drug squad officers in possession of 800 grams of cannabis which, according to the authorities, they intended to sell. On the day of the arrest journalists from a local channel and a newspaper filmed and took photographs of the applicant at the police station. The next day a photograph of the applicant showing visible traces of violence was published on the front page of the newspaper, together with an article calling him a "drug trafficker".

The Court held that the behavior of the police in calling journalists and allowing them to film the applicant at the police station on the day proceedings were brought against him, without his consent and with a view to publishing the pictures in the media, amounted to interference with the applicant's right to respect for his private life. The Romanian Government had offered no explanation to justify such interference and there was nothing to suggest that the dissemination of the pictures concerned, which had no real news value as such, had been meant to serve the interests of justice.

Conclusion: violation of Article 8 (right to respect for private life) of the Convention

Convictions of newspaper editors for publishing photographs of a person on the point of being arrested to serve a lengthy for a triple murder

Egeland and Hanseid v. Norway n° [34438/04](#)

16 April 2009

The two applicants, editors-in-chief of two major national newspapers in Norway, complained about their conviction and sentencing to a fine for publishing photographs of an individual about to be taken away to serve the long prison term to which she had just been sentenced for her involvement in a triple murder.

The Court held that, although the photographs had concerned a public event and had been taken in a public place at a time when the person's identity was already well known to the public, they had been particularly intrusive. Furthermore, the person concerned had not consented to the photographs being taken or to their publication, and the fact that she had cooperated with the press on previous occasions could not justify depriving her of protection in these circumstances. In addition, the fines imposed on the applicants had not been particularly severe. In sum, the requirements of the protection of privacy and the fair administration of justice had been sufficient to justify the restriction on the applicant editors' right to freedom of expression.

Conclusion: **no violation of Article 10** (freedom of expression) of the Convention

Release to the local television of the video recording the applicant being taken to a police station on suspicion of drunk driving

Khmel v. Russia [20383/04](#)

12 December 2013

At the time of the facts, the applicant was a member of the Murmansk regional legislature. He was taken to a police station on suspicion of drunk driving. The police chief invited television crews to the station, and that afternoon the applicant was filmed whilst in a dishevelled state and acting inappropriately. Some of the footage was broadcast on public television the next day. Administrative and criminal proceedings were later brought against him for his actions on the day he was filmed. The applicant complained in particular of the filming of him at the police station and the broadcasting of the footage, which he claimed to be unlawful.

The Court held that, in the absence of the applicant's consent, the release of the video recording to the regional television had been in flagrant breach of the domestic law. The interference with the applicant's right to respect for private life was therefore not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention.

Conclusion: violation of Article 8 (right to respect for private life) of the Convention.

Posting of the applicant's photograph on the wanted board not in accordance with domestic law

Giorgi Nikolaishvili v. Georgia [n° 37048/04](#)

13 January 2009

Photographs of the applicant, his brother and two other men were posted on the "wanted persons" boards of various police stations. The four men were identified by name and said to be wanted in connection with a murder. In subsequent correspondence between the applicant's lawyer and the Ministry of the Interior, it emerged that the only wanted man was the applicant's brother and that operational measures were being taken to interview the applicant as a witness in view of his repeated

refusals to appear before the district prosecutor. The Court held that there as the posting of the applicant's photograph on the wanted board was not in accordance with domestic law.

Conclusion: **violation of Article 8** (right to respect for private life) of the Convention

Insufficiency of grounds given by Supreme Court for awarding damages against magazine for identifying criminal defendant

Eerikäinen and Others v. Finland n° [3514/02](#)

10 February 2009

The applicants, the publishing company and editor-in-chief of a magazine and one of its journalists, complained of being ordered by the Finnish Supreme Court to pay damages after publishing an article reporting on the pending criminal proceedings against a businesswoman accused of fraud against the social security scheme and some insurance companies. Although the article did not mention her by name, it was set alongside another wholly unrelated article which the journalist had written some years previously for another magazine, with the woman's consent, and which gave her full name and included two photographs of her.

The Court held that the report in the impugned article concerning the criminal proceedings against the businesswoman had been based on a public document concerning a subject of legitimate public interest and designed to contribute to public discussion of the subject. Moreover, the Finnish Supreme Court had not examined the implications of the fact that the photographs had been taken with the woman's consent with a view to their publication, albeit for the purposes of a previous article and in a different context. Accordingly, the grounds relied on, although relevant, were not sufficient to justify the interference with the applicants' right to freedom of expression.

Conclusion: violation of Article 10 (freedom of expression) of the Convention

See, also, *Axel Springer SE and RTL Television GmbH v. Germany* - [51405/12](#) [Order banning publication of images from which accused in murder trial could be identified] Judgment 21.9.2017 : no violation

II. Other relevant Council of Europe's instruments

1. Committee of Ministers

- [Recommendation CM/Rec\(2016\)1 of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality](#)
- [Declaration of the Committee of Ministers on the protection of journalism and safety of journalists and other media actors \(Adopted by the Committee of Ministers on 30 April 2014 at the 1198th meeting of the Ministers' Deputies\)](#)
- [Declaration of the Committee of Ministers on the Desirability of International Standards dealing with Forum Shopping in respect of Defamation, "Libel Tourism", to ensure Freedom of Expression \(Adopted by the Committee of Ministers on 4 July 2012 at the 1147th meeting of the Ministers' Deputies\)](#)

2. Parliamentary Assembly

- [Resolution 1577](#) (2007) and [Recommendation 1814](#) (2007) of the Parliamentary Assembly “Towards decriminalisation of defamation”
- [Doc. 11305 Report 2007](#) of the Committee on Culture, Science, Education and Media of the Parliamentary Assembly: [Towards decriminalisation of defamation](#)

3. Commissioner for Human Rights

- See [Contribution to OSCE 2010 Review Conference](#) : protection of journalists, defamation, media diversity, ethical journalism. (30 September - 8 October 2010) and
- [Positions on freedom of the media](#)

On the Commissioner’s webpage <http://www.coe.int/fr/web/commissioner/thematic-work/media-freedom>

4. Venice Commission

- [Opinion on articles 216, 299, 301 and 314 of the penal code of Turkey adopted by the Venice Commission at its 106th plenary session \(Venice, 11-12 march 2016\)](#)

5. Other

- See [Study on the alignment of laws and practices concerning defamation with the relevant case-law of the European Court of Human Rights on freedom of expression, particularly with regard to the principle of proportionality \(Document CDMSI\(2012\)Misc11Rev2 prepared by the Media Division of the Council of Europe\)](#)
- [Freedom of expression and defamation. A study of the case-law of the European Court of Human Rights \(Council of Europe, 2016\)](#)