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CASE LAW CONCERNING
ARTICLE 10 OF THE
EUROPEAN CONVENTION
ON HUMAN RIGHTS

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All the judgments, reports and decisions can be consulted on the Court’s database, via the Internet at the following address: http://hudoc.echr.coe.int/

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Contents

Introduction .................................................................................................................. 5

1. The case law relating to freedom of expression ......................................................... 7
   A. In the press ............................................................................................................. 9
      1. Judgments of the Court ................................................................................ 9
      2. Decisions and reports of the Commission and the Court ......................... 26
   B. In broadcasting ..................................................................................................... 30
      1. Judgments of the Court ................................................................................ 30
      2. Decisions and reports of the Commission and the Court ......................... 34
   C. Access to information ........................................................................................... 41
      1. Judgments of the Court ................................................................................ 41
      2. Decisions of the Commission ....................................................................... 42
   D. Commercial statements ......................................................................................... 43
      1. Judgments of the Court ................................................................................ 43
      2. Decisions of the Commission and the Court ................................................. 45
   E. Protection of general interest .................................................................................. 46
      1. Judgments of the Court ................................................................................ 46
      2. Decisions and reports of the Commission and the Court ......................... 55
   F. Protection of other individual rights ....................................................................... 59
      1. Judgments of the Court ................................................................................ 59
      2. Decisions of the Commission and the Court ................................................. 63
   G. Maintaining the authority and impartiality of the judiciary .................................... 65
      1. Judgments of the Court ................................................................................ 65
      2. Decisions of the Commission and the Court ................................................. 66

2. Main judgments, decisions and reports ..................................................................... 67
   A. Judgments of the European Court of Human Rights .......................................... 67
   B. Decisions and reports of the European Commission and Court of Human Rights ................................................................................................................. 76

Index ............................................................................................................................. 89
Introduction

This document presents, at December 2000:

- comments on the case law relating to freedom of expression. In the summaries included, only cases concerning directly and primarily Article 10 were retained. It must be stressed, however, that this article must be read in the light of all the Convention’s provisions which may either tend to restrict its scope (Articles 15, 16, 17, for example), or guarantee protection of a more specific kind (Articles 8, 9, 11, for example);

- references to the main decisions and judgments of the European Court of Human Rights (part A) and to the main decisions and reports of the European Commission of Human Rights (part B) concerning Article 10 of the European Convention on Human Rights in general and media freedom in particular.

The new European Court of Human Rights came into operation on 1 November 1998, with the entry into force of Protocol No. 11 to the European Convention on Human Rights. The Court functions on a permanent basis and replaces the two former supervisory organs of the Convention (Court and Commission).
1. The case law relating to freedom of expression

Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter called the Convention) is devoted to freedom of expression. The Convention was signed on 4 November 1950, entered into force on 3 September 1953 and has been ratified by 41 of the 43 member States of the Council of Europe.\(^1\) It reads as follows:

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

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

A substantial body of case law has been established by the European Court and European Commission of Human Rights (hereafter called the Court and the Commission) with regard to this Article.\(^2\) The Court has described

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1 Armenia and Azerbaijan, which joined the Council of Europe on 25 January 2001, have signed but not yet ratified the Convention (at 15 May 2001).

freedom of expression as “one of the basic conditions for the progress of
democratic societies and for the development of each individual”. 3

Under the Convention, freedom of expression and information is not
absolute. The State may validly interfere with such freedom (irrespective of
the medium through which opinions, information and ideas are expressed)
but only under the conditions laid down in Article 10, para. 2. It is worth
noting in this context the relationship between the third sentence of Article
10, para. 1 (“this Article shall not prevent States from requiring the licens-
ing of broadcasting, television or cinema enterprises”) and para. 2. The
Court has stated that the purpose of the third sentence is:

to make it clear that States are permitted to regulate by a licensing system
the way in which broadcasting is organised in their territories, particularly in
its technical aspects... Technical aspects are undeniably important, but the
grant or refusal of a licence may also be made conditional on other conside-
rations, including such matters as the nature and objectives of a proposed
station, its potential audience at a national, regional or local level, the rights
and needs of a specific audience and the obligations deriving from interna-
tional legal instruments. This may lead to interferences whose aims will be
legitimate under the third sentence of paragraph 1, even though they do
not correspond to any of the aims set out in paragraph 2. The compatibility
of such interferences must nevertheless be assessed in the light of the other
requirements of paragraph 2.4

If the conditions laid down in the second paragraph are not fulfilled, a
limitation on freedom of expression and information will amount to a
violation of the Convention. Cases of legitimate restrictions are to be
specified in law 5 and can be accepted only when they are considered to be
necessary in a democratic society.

3 Handyside judgment of 7 December 1976, Series A No. 24, para. 49.
4 Informationsverein Lentia and others judgment of 24 November 1993, Series A No. 276, para. 32.
5 In the Herczegfalvy judgment, the Court found that Article 10 had been violated owing to the lack
of a legal basis for the restrictions imposed on the applicant, who wanted access to reading matter,
radio and television, and through interference in the exercise of his right to receive information dur-
ing his psychiatric treatment and confinement. European Court of H.R., Herczegfalvy judgment of
24 September 1992, Series A No. 244. See also the Hashman and Harrup judgment of 25 Novem-
ber 1999, Reports 1999-VIII. In this case the Court noted that the expression “to be of good be-
haviour”, that is, not to behave contra bonos mores (defined in English law as behaviour which is
“wrong rather than right in the judgment of the majority of contemporary fellow citizens”) is par-
ticularly imprecise, and did not give the applicants sufficiently clear guidance as to how they should
behave in future.
The restrictions on the exercise of freedom of expression and information that are admissible according to Article 10, para. 2, fall into three categories:

- those designed to protect the public interest (national security, territorial integrity, public safety, prevention of disorder or crime, protection of health or morals);
- those designed to protect other individual rights (protection of the reputation or rights of others, prevention of the disclosure of information received in confidence);
- those that are necessary for maintaining the authority and impartiality of the judiciary.

This list may appear to be an extensive one, but it should be noted that, in order to be admissible, any restriction must be prescribed by law and be necessary “in a democratic society”. The Court has repeatedly stressed the importance of testing whether interference is necessary in the context of European supervision.

The Court has consistently held that:

> the Contracting States enjoy a certain margin of appreciation in assessing the need for an interference, but this margin goes hand in hand with European supervision, whose extent will vary according to the case. Where there has been an interference with the exercise of the rights and freedoms guaranteed in paragraph 1 of Article 10, the supervision must be strict, because of the importance of the rights in question; the importance of these rights has been stressed by the Court many times. The necessity for restricting them must be convincingly established.\(^6\)

In regard to the press, the Court held that “the national margin of appreciation is circumscribed by the interest of democratic society in ensuring and maintaining a free press.”\(^7\)

**A. In the press**

**1. Judgments of the Court**

The Court dealt for the first time in 1960 with an issue relating to Article 10, in the *De Becker* case concerning lifelong prohibition on exercising the

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\(^6\) Autronic AG judgment of 22 May 1990, Series A No. 178, para. 61.

\(^7\) Worm judgment of 29 August 1997, Reports 1997-V, para. 47
professions of journalist or author. Following a change in Belgian law, in 1961, to the advantage of the victim, the Court no longer saw any point in continuing the case and struck it off its list.\(^8\)

In the *Engel and others* case, the Court found, in June 1976, that a disciplinary sanction imposed on Dutch soldiers for having published articles undermining military discipline was not intended to deprive them of their freedom of expression, but to punish abuse of that freedom, and therefore did not amount to a violation.\(^9\)

The first case in which the Court had to take a decision on the merits in respect of freedom of expression and information in the press was in the *Sunday Times (No. 1)* case, concerning the United Kingdom. In this case, the Court held, in April 1979, that there had been a violation of Article 10 by reason of an injunction restraining the publication in the *Sunday Times* of an article concerning a drug and the litigation linked to its use. The injunction, based on the English law on contempt of court, was not found to be “necessary in a democratic society”.\(^10\)

In the *Barthold* case, the Court held, in March 1985, that the prohibitions on a German veterinary surgeon – under the Unfair Competition Act and the Rules of Professional Conduct – from making certain statements in the popular press took no account of freedom of expression.\(^11\)

In the *Lingens* case, the Court clarified, in July 1986, the scope of these principles with regard to the press:

> Whilst the press must not overstep the bounds set, inter alia, for the “protection of the reputation of others”, it is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them.\(^12\)

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

\(^{8}\) De Becker case of 27 March 1962, Series A No. 4. 
\(^{9}\) Engel and others judgment of 8 June 1976, Series A No. 22. 
\(^{10}\) Sunday Times (No. 1) judgment of 26 April 1979, Series A No. 30, para. 65. 
\(^{11}\) Barthold judgment of 25 March 1985, Series A No. 90. 
\(^{12}\) Lingens judgment of 8 July 1986, Series A No. 103, para. 41.
the limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance” (para. 42).

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

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

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

In the Weber case, the Court pronounced its judgment in the Weber case. The case concerned the conviction of a Swiss journalist for disclosing, during a press conference, information on a pending judicial procedure, in violation of the secrecy of the investigation guaranteed by the Code of Criminal Procedure of the Canton of Vaud. The Court concluded that this conviction constituted a violation of Article 10, in so far as it resulted in an interference in freedom of expression which “was not necessary in a democratic society” for the realisation of the intended legitimate purpose. The Court noted that such information had already been disclosed during a previous press conference and therefore the interest in keeping secret some facts already known by the public no longer existed.

In the Oberschlick (No. 1) case, the Court decided, in May 1991, that there was a violation of Article 10. This case dealt with a libel action brought against the applicant by an Austrian politician and subsequent conviction of the applicant. The Court concluded that there had been a
violation of Article 10, on the grounds that, in so far as the statements of the applicant were judgments of value, the interference was not necessary in a democratic society.\textsuperscript{15}

In November 1991, two applications were brought before the Court against the United Kingdom concerning temporary injunctions imposed in July 1986 on the Observer and Guardian newspapers, and subsequently on the Sunday Times itself, preventing the publishing or disclosure of extracts from Spycatcher, the memoirs of a former member of the British Security Services. The Court held in both cases that there had been a violation of Article 10, on the grounds that the interference was not “necessary” since the confidentiality of the contents of the book had been nullified by its publication in the United States. In the Observer and Guardian\textsuperscript{16} case this amounted to a violation in the second period (July 1987 to October 1988), but not in the first (July 1986 to July 1987), as disclosures would have been detrimental to the Service and it was improbable that the contents of the (then unpublished) manuscript would have raised questions of public concern outweighing interests of national security. In the second case, Sunday Times (No. 2), the Court held that the imposition of injunctions by the House of Lords was in violation of the applicants’ rights under Article 10 of the Convention.\textsuperscript{17}

In the Castells judgment, in April 1992, the Court held there had been a violation of Article 10. The application involved the conviction of the applicant, a Basque militant and member of the Spanish Parliament, for insulting the Government by publishing an article in which he accused the Government of supporting or tolerating attacks on Basques by armed groups. In this respect, the Court made the following observations:

The pre-eminence of the press in a State governed by the rule of law must not be forgotten[...]. Freedom of the press affords the public one of the best means of discovering and forming an opinion on the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion; it thus enables everyone to participate in the free political debate which is at the very core of the concept of a democratic society.\textsuperscript{18}

\begin{thebibliography}{9}
\bibitem{15} Oberschlick judgment (No. 1) of 23 May 1991, Series A No. 204.
\bibitem{16} The Observer and Guardian Newspapers Ltd judgment of 26 November 1991, Series A No. 216.
\bibitem{17} Sunday Times (No. 2) judgment of 26 November 1991, Series A No. 217.
\bibitem{18} Castells judgment of 23 April 1992, Series A No. 236 para. 43.
\end{thebibliography}
In June 1992, the Court concluded in the *Thorgeir Thorgeirson* case, concerning the conviction of the applicant following the publication in a newspaper of two articles alleging police brutality, that there had been a violation of the applicant’s rights according to Article 10. The Court held that the interference was not proportionate to the legitimate aim of “protecting the reputation of others”. Whilst the press must not overstep the bounds set, it is nevertheless incumbent on it to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them.\(^\text{19}\)

In the *Schwabe* judgment of August 1992, the Court concluded there had been a violation of Article 10, as the interference could not be regarded as “necessary in a democratic society for the protection of the reputation of others”. The application concerned the conviction of the applicant for defamation after he had reproached a political figure for a criminal offence in respect of which the sentence had already been served.\(^\text{20}\)

In a judgment delivered in December 1994 in the *Vereinigung Demokratischer Soldaten Österreichs and Gubi* case, the Court found that the freedom of expression of the two applicants had been violated. In this case, the Ministry for Defence had refused permission for the magazine *Der Igel* to be distributed to soldiers in barracks. This prohibition was not considered necessary in a democratic society and was disproportionate to the defence of order, the legitimate aim pursued by the ministry.\(^\text{21}\)

The Court found unanimously that Article 10 had been violated in the *Vereniging Weekblad Bluf!* judgment, delivered in February 1995. The seizure and withdrawal from circulation of an issue of the magazine distributed by the applicant association, on the grounds of the publication of a classified article relating to the Internal Security Service, constituted a disproportionate interference in the exercise of freedom of expression. Following the seizure, a reprint was made and 2,500 copies distributed. As

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\(^{19}\) *Thorgeir Thorgeirson* judgment of 25 June 1992, Series A No. 239 paras. 59-70.

\(^{20}\) *Schwabe* judgment of 28 August 1992, Series A No. 242-B.

\(^{21}\) *Vereinigung Demokratischer Soldaten Österreichs and Gubi* judgment of 19 December 1994, Series A No. 302. In February 1997, however, the Commission found that a conviction for incitement to disregard military laws was not in violation of Article 10 as its legitimate aim was to defend order and prevent crime. See Appl. No. 23697/94, R. Saszmann v. Austria, Decision of 27 February 1997, unpublished.
the information had thus been made accessible to a large number of persons, its protection as a State secret was no longer justified from the point of view of Article 10.\textsuperscript{22}

In the \textit{Prager and Oberschlick} case of April 1995, the Court concluded that the conviction of a journalist and a publisher for defamation of a judge following the publication of critical comments did not constitute a violation of Article 10. Despite its “pre-eminent role” in a State governed by the rule of law, the press must respect certain limits. The applicant’s very harsh criticism of the judge’s personal and professional integrity was lacking in good faith and was not in keeping with the rules of journalistic ethics. For the Court, such interference in freedom of expression, given the circumstances of the case and the margin of appreciation enjoyed by States, was not disproportionate to the goal of protecting the reputation of others and maintaining the authority of the judiciary. Hence, this interference could be considered necessary in a democratic society.\textsuperscript{23}

In a judgment delivered in July 1995 in the \textit{Tolstoy Miloslavsky} case, the Court found unanimously that there had been disproportionate interference and hence a violation of Article 10 in a case concerning an injunction and the payment of a sum of £1.5 million in damages for defamation of the warden of a private school by accusing him of past war crimes. For the Court, the amount of damages, as allowed by domestic law in the period concerned, could not be considered necessary for the protection of the reputation or rights of others.\textsuperscript{24}

In March 1996, the Court found that there had been a violation of Article 10 in the \textit{Goodwin} case, which concerned an order requiring the applicant – a journalist – to disclose his sources of information. The Court found that “protection of journalistic sources is one of the basic conditions for press freedom”. The importance of this protection was stressed by many national codes of ethics, by the Resolution on journalistic freedoms and human rights\textsuperscript{25} and by the European Parliament’s Resolution on the confi-

\textsuperscript{22} Vereniging Weekblad Bluf! judgment of 9 February 1995, Series A No. 306-A.
\textsuperscript{23} Prager and Oberschlick judgment of 26 April 1995, Series A No. 313.
\textsuperscript{24} Tolstoy Miloslavsky judgment of 13 July 1995, Series A No. 316-B.
\textsuperscript{25} Adopted at the 4th European Ministerial Conference on Mass Media Policy (Prague, 7-8 December 1994).
identiality of journalists’ sources. Only “an overriding requirement in the public interest” (para. 39) could justify interference with the protection of sources. In this present case, neither the disclosure order nor the fine for contempt of court was justified under Article 10, para. 2.

In February 1997, the Court found that there had been a violation of Article 10 following the conviction of two journalists for defamation of several appeal court judges. Reiterating the broad principles of the case law mentioned above, the Court pointed out that: “journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.” In this case the accusations published by the journalists amount to an opinion “whose truth, by definition, is not susceptible of proof” (para. 47). Therefore the conviction of the applicants cannot be justified under Article 10, para. 2.

In the Oberschlick (No. 2) case of July 1997, the Court was to confirm this finding. Here, a journalist had been convicted of insult. In an article commenting on a speech delivered by a politician, he had called the man an “idiot” (Trottel). For the Court, the politician concerned had “clearly intended to be provocative and consequently to arouse strong reactions.” Consequently, while, “the applicant’s words [...] may certainly be considered polemical, they did not on that account constitute a gratuitous personal attack as the author provided an objectively understandable explanation for them derived from the politician’s speech [...]” (para. 33). The Court held that the word “idiot” (Trottel) “does not seem disproportionate to the indignation knowingly aroused” (para. 34) by the politician in his speech. The conviction of the journalist is therefore in breach of Article 10.

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26 18 January 1994, OJEC No. C 44/34.
27 Goodwin judgment of 27 March 1996, Reports 1996-II. Although the Court has not explicitly taken a position on whether or not the “negative right” of freedom of expression is protected by Article 10 para. 1, the Commission clearly asserted this guarantee in its report: see Appl. No. 17488/90, Goodwin v. the United Kingdom, report of 1 March 1994, para. 48.
28 De Haes and Gijsels judgment of 24 February 1997 (para. 46), Reports 1997-I. The Commission also stated in its report that: “... the general interest in a public debate which has a serious purpose outweighs the legitimate aim of protecting the reputation of others, even if such debate involves the use of wounding or offensive language.” See Appl. No. 19983/92, L. De Haes and H. Gijsels v. Belgium, report of 29 November 1995, para. 63.
29 Oberschlick (No. 2) judgment of 1 July 1997, Reports 1997-IV, para. 33.
In the *Worm* case, in August 1997, the Court held that ordering a journalist to pay a fine for publishing an article likely to influence the outcome of criminal proceedings involving a former minister was not in breach of Article 10. According to the Court:

> Provided that it does not overstep the bounds imposed in the interests of the proper administration of justice, reporting, including comment, on court proceedings contributes to their publicity and is thus perfectly consonant with the requirement under Article 6, para. 1, of the Convention that hearings be public.\(^{30}\)

In this case the Court held that the applicant’s article overstepped the bounds imposed in the interests of the proper administration of justice, as it was likely to influence the outcome of the trial.

In September 1998, in the *Lehideux and Isorni* case, the Court considered that a criminal conviction to pay token damages for publishing an advertisement for the rehabilitation of Marshal Pétain in a national newspaper constituted a violation of Article 10 of the Convention. In keeping with the case law referred to on page 27, the Court confirmed that “the justification of a pro-Nazi policy could not be allowed to enjoy the protection afforded by Article 10”.\(^{31}\) In the present case, however, the text of the advertisement distanced itself from any such justification by referring to “Nazi atrocities and persecutions” and “German omnipotence and barbarism”. Certainly, the Court recognised that the text in issue made no mention of the fact that Marshal Pétain had “knowingly contributed to it, particularly through his responsibility for the persecution and deportation to the death camps of tens of thousands of Jews in France” (para. 54). However, the Court took a number of other circumstances of the case into consideration. Firstly, it referred to the position taken by the prosecuting authorities, which did not consider it necessary to bring proceedings

\(^{30}\) *Worm* judgment of 27 August 1997, Reports 1997-V, para. 50.

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

against the applicants. The Court then noted the length of time that had passed since the events referred to in the advertisement (forty years) and considered that it “forms part of the efforts that every country must make to debate its own history openly and dispassionately” (para. 55). The European Court went on to note that the associations in which the applicants were active were legally constituted. Finally, the Court concluded that the sentence passed on the applicants was disproportionate, stressing the “seriousness of a criminal conviction […], having regard to the existence of other means of intervention and rebuttal, particularly through civil remedies” (para. 57).

In August 1998, the Court found that there had been a violation of Article 10 in the case of Hertel concerning the prohibition on the applicant from publishing articles on the health dangers of microwave ovens. The Court noted that the prohibition measures contested were disproportionate. According to the European judges:

> the effect of the injunction was […] partly to censor the applicant's work and substantially to reduce his ability to put forward in public views which have their place in a public debate whose existence cannot be denied. It matters little that his opinion is a minority one and may appear to be devoid of merit since, in a sphere in which it is unlikely that any certainty exists, it would be particularly unreasonable to restrict freedom of expression only to generally accepted ideas.\(^{32}\)

In its judgment of the case of Fressoz and Roire, in January 1999, the Court considered that the criminal conviction for possessing photocopies of tax documents, following publication of an article giving details of the chairman of the Peugeot automobile company's pay increases in the satirical weekly Le Canard enchaîné, was a violation of Article 10. The Court stressed that the article complained of “contributed to a public debate on a matter of general interest”,\(^{33}\) since the said article was published during an industrial dispute at one of the major French car manufacturers. In the Court’s opinion, the purpose of the article was not to infringe the rights – in this case, damage the reputation – of the company chairman, but to “contribute to the more general debate on a topic that interested the public”. In this case, “issues concerning employment and pay generally attract considerable attention […] the interest in the public's


being informed outweighed the duties and responsibilities the applicants
had as a result of the suspect origin of the documents that were sent to
them” (paras. 51, 52). The Court confirmed the principle that Article 10
“protects journalists’ rights to divulge information on issues of general
interest provided that they are acting in good faith and on an accurate
factual basis and provide reliable and precise information in accordance
with the ethics of journalism” (para. 54).

In the case of *Bladet Tromsø and Stensaas*, in May 1999, the Court found
that there had been a violation of Article 10. The case concerned a news-
paper and its editor ordered to pay damages for defamation following the
publication of statements made by a third party concerning alleged viola-
tions of seal hunting regulations. The Court recalled that it is the duty of
the press to impart – in a manner consistent with its obligations and
responsibilities – information and ideas on all matters of public interest. It
considered that the newspaper had acted in good faith and that it could
reasonably rely on an official report without being required to carry out its
own research into the accuracy of the facts reported. There was therefore
no reasonable relationship of proportionality between the restrictions
placed on the applicants’ right to freedom of expression and the aim
pursued, namely to protect the reputation of others.  

In five judgments of 8 July 1999 concerning Turkey, the Court ruled on the
conviction of the applicants (editors-in-chief or owners of various newspa-
pers) for propaganda against the integrity of the State, following the
publication of articles criticising State policy in south-east Turkey. In all five
cases the Court declared that media professionals had special responsibili-
ties and duties in the event of conflict and tension because they could
become “a vehicle for the dissemination of hate speech and the promotion
of violence”. However, the Court noted, in keeping with its previous case
law, that it was the duty of the press to impart information and ideas on
political issues, even controversial ones, and that this went hand in hand
with the public’s right to be informed. It also recalled that “there is little
scope under Article 10, para. 2, of the Convention for restrictions on
political speech”.

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34 Bladet Tromsø and Stensaas judgment of 20 May 1999, Reports 1999-III.
Accordingly, in the cases of Erdogdu and Ince, Sürek and Özdemir and Sürek (No. 4) the Court considered that, in view of the context in which they had been published, the impugned statements did not constitute an incitement to violence. It therefore found that there had been a violation of Article 10 of the Convention. In the opinion of the Court, the harsh tone of the speech or the fact that it was uttered by a leader of a proscribed organisation did not justify interference with freedom of expression. The Court further stressed “the public’s right to be informed of a different perspective on the situation in south-east Turkey”. Having regard to the above considerations and to the severity of the punishment, the conviction of the applicants was considered disproportionate to the aims pursued, namely protecting national security and territorial integrity.

By contrast, in the cases of Sürek (No. 1) and Sürek (No. 3) the Court considered that there had been no violation of Article 10 of the Convention as the impugned publications resembled an incitement to violence. The applicant, as owner of the publication, bore the same duties and responsibilities as the editors and journalists in respect of the information collected and disseminated. Even if he did not personally endorse the opinions expressed in the articles, he provided the writers with an outlet for “stirring up violence”. Accordingly, his conviction in both cases corresponds to a pressing social need.

In July 1999, the Court found that there had been a violation of Article 10 of the Convention in the Ceylan case. The application concerned the conviction of a trade union president for incitement to hatred following the publication of criticisms of State policy in south-east Turkey. Referring to its case law, the Court recalled that “the limits of permissible criticism are wider with regard to government than in relation to a private citizen or even a politician”. In this case the impugned article, harsh as it was, did not constitute an incitement to hatred. Furthermore, the sentences handed

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35 Erdogdu and Ince judgment of 8 July 1999, Reports 1999-IV.
37 Sürek (No. 4) judgment of 8 July 1999, unpublished.
38 Sürek and Özdemir judgment of 8 July 1999, para. 61, unpublished.
39 Sürek (No. 1) judgment of 8 July 1999, Reports 1999-IV.
40 Sürek (No. 3) judgment of 8 July 1999, unpublished.
41 Ceylan judgment of 8 July 1999, Reports 1999-IV, para. 34.
down were too harsh. The conviction of the applicant was therefore considered disproportionate to the legitimate aims pursued.

In the Sürek (No. 2) judgment of 8 July 1999, the Court found that there had been a violation of Article 10 of the Convention. The case concerned the conviction of the applicant for having published the names of officials responsible for combating terrorism. In view of the seriousness of the offences committed by the officials concerned, the Court decided that it was in the legitimate interest of the public to be informed not only of their behaviour but also of their identity. Furthermore, as the information had already been published in other newspapers, the interest in protecting the identity of the officers concerned had been “substantially diminished”.

On the other hand, the conviction and sentence were capable of discouraging the contribution of the press to open discussion on matters of public concern. Accordingly, in the absence of a fair balance between protecting the freedom of the press and protecting the identity of the public officials, the Court declared the interference disproportionate to the legitimate aims pursued.

In the Okçuoglu case, in July 1999, the Court decided that the conviction of the applicant for separatist propaganda following the publication by a magazine of his opinion on the situation of the population in the south-east of Turkey constituted a violation of Article 10 of the Convention. In fact, the impugned remarks, which did not constitute an incitement to violence, were made to a publication with a small circulation. In the view of the Court, this “significantly reduced their potential impact on national security, public order or territorial integrity”.

The Court further confirmed that the limits of permissible criticism are wider with regard to the government than in relation to a private citizen, or even a politician. Having regard also to the severity of the penalty imposed, the Court ruled that the interference in the applicant’s right to freedom of expression was disproportionate to the aims pursued.

The Court found that there had been a violation of Article 10 of the Convention in the Öztürk case of 28 September 1999. The applicant had been convicted for incitement to hatred after having published the second edition of a book recounting the life of one of the founders of the Turkish

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42 Sürek (No. 2) judgment of 8 July 1999, para. 40, unpublished.
43 Okçuoglu judgment of 8 July 1999, para. 48, unpublished.
Communist Party. The author, charged with the same offence, was acquitted. For the Court, the impugned book, whose content did not differ in any way from that of the other editions, could not be regarded as incitement to violence and, without any evidence of concrete action to the contrary, had no aims other than those proclaimed by the author. The Court therefore considered that it had not been established that at the time when the edition in issue was published there was a pressing social need.\(^{44}\)

In the \textit{Dalban} case, in September 1999, the Court ruled that the criminal conviction of a journalist for defamation following the publication of several articles accusing public personalities of involvement in fraud constituted a violation of Article 10 of the Convention. It recalled that it was the duty of the press, while respecting the reputation of others, to impart information and ideas on all matters of public interest, and rejected the idea that “a journalist should be debarred from expressing critical value judgments unless he or she could prove their truth”.\(^{45}\) In the present case the impugned articles did not concern the private lives of the public personalities but their behaviour and attitudes when discharging their duties. Furthermore, there was no proof that the description of events given in the articles was totally untrue and was designed to fuel a defamation campaign. Accordingly, the Court found that, in relation to the legitimate aim pursued, convicting the applicant of a criminal offence amounted to disproportionate interference with the exercise of the journalist's freedom of expression.

The \textit{News Verlags Gmbh and CoKG} case, judged in January 2000, concerned an order prohibiting a magazine from publishing photographs of a suspect in connection with articles relating to criminal proceedings against him. The pictures were accompanied by comments directly or indirectly designating the applicant as the culprit. The Court took all the circumstances into account. In particular, the fact that the photographs were published following a series of letter-bomb attacks proved that the issue was one of public interest. The suspect, a known right-wing extremist, was also suspected of attempts to undermine democratic society. Finally, the photographs revealed nothing of the suspect’s personal life and in no way

\(^{44}\) Öztürk judgment of 28 September 1999, Reports 1999-VI.

\(^{45}\) Dalban judgment of 28 September 1999, Reports 1999-VI, para. 49.
violated his right to privacy. The Court then noted that publication of the pictures at issue had been prohibited even though they were a threat to the suspect’s legitimate interests only because of the accompanying comments. Furthermore, the sentence pronounced restricted the freedom of the applicant company to present its articles as it pleased, while the other media had been allowed to publish the photographs throughout the judicial proceedings. Accordingly, the Court ruled that the impugned measure was disproportionate to the legitimate aims pursued and therefore at variance with Article 10.\(^6\)

In March 2000, the Court delivered its judgment in the Özgür Gündem case relating to various incidents (aggressions, search, arrest and criminal convictions) concerning a newspaper and its staff.

Concerning the alleged acts of violence, the Court declared that in view of the key importance of freedom of expression as one of the preconditions for a functioning democracy:

> genuine, effective exercise of this freedom does not depend merely on the State’s duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals. In determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual.\(^7\)

In the opinion of the Court, the argument that the newspaper and its staff supported the PKK did not “provide a justification for failing to take steps effectively to investigate and, where necessary, provide protection against unlawful acts involving violence” (para. 45). The Court concluded that the Government had failed to comply with their positive obligation to protect the newspaper in the exercise of its freedom of expression.

The Court went on to consider the various measures imposed on the applicants by the authorities. The search and arrest operation was considered disproportionate to the legitimate aim pursued, namely the protection of law and order, as it seriously disrupted the production of the newspaper without any real evidence of the need for such a measure.

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\(^7\) Özgür Gündem judgment of 16 March 2000, Reports 2000-III, para. 43.
Concerning the various sanctions imposed following the publication of articles, it was decided that in most cases they were unnecessary in a democratic society. The Court recalled that:

the dominant position enjoyed by the State authorities makes it necessary for them to display restraint in resorting to criminal proceedings. The authorities of a democratic State must tolerate criticism, even if it may be regarded as provocative or insulting (para. 60).

In the Court’s opinion, the articles were not an incitement to violence in view of their content, tone and context. Nor could interviews with a member of a proscribed organisation, virulent criticism of government policy or the use of the term “Kurdistan” in a context implying that it is separate from the territory of Turkey in themselves justify interference with the newspaper’s right to freedom of expression. Only three articles were found to advocate the use of violence and the corresponding measures taken by the authorities were found to be in keeping with Article 10.

In May 2000, the Court delivered judgment in the case of Bergens Tidende and others concerning the sentencing of a newspaper, its former editor and a journalist to pay damages to a plastic surgeon for publishing a series of articles reporting the experiences of dissatisfied patients. The Court observed from the outset that the impugned articles “concerned an important aspect of human health and as such raised serious issues affecting the public interest”. 48 In this case, the events related by the patients were considered true in essence and were faithfully reported by the newspaper. The fact that the applicant newspaper did not make it explicitly clear in the articles themselves that the accounts given by the women were not to be taken as suggesting a lack of surgical skills did not show a lack of balance. The Court recalled that:

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

While accepting that publication of the articles had a negative effect on the doctor’s professional practice, the Court pointed out that:

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

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

In the Erdogdu and Sener cases, the Court found that the conviction of the editors of two periodicals for propaganda against the territorial indivisibility of the State following the publication of articles analysing the situation in south-east Turkey constituted a violation of Article 10 of the Convention. In keeping with its established case law, the Court recalled that this article left little room for restrictions on freedom of expression in the field of political beliefs. However, it was confirmed that in the event of incitement to violence national authorities enjoy a greater margin of appreciation in assessing the need for interference.

In both cases, the Court found that the opinions expressed, however categorical or scathing, could not be considered as an incitement to violence. In convicting the applicants, therefore, the national authorities failed to show due respect for the freedom of the press and the right of the public to be informed of another way of looking at the Kurdish problem.

The moderation of the sentence put forward by the Government was not taken into consideration by the Court. It consisted of a suspension of sentence conditional on the applicants committing no intentional offence in their capacity as editors for a period of three years. In the Court’s opinion this measure was in fact designed to severely limit the applicants’ ability to express views which had their rightful place in a public debate.

In the Lopes Gomes Da Silva case, a newspaper director was found guilty of defamation because of terms he used in an editorial in respect of a journalist who was a candidate in municipal elections. In this case the opinions expressed by the applicant were clearly part of a political debate on matters of general interest. According to the Court the impugned article could be considered polemical but did not constitute a gratuitous personal attack, as the author gave an objective explanation. The Court added in this respect that “political invective often spilled over into the personal

50 Sener judgment of 18 July 2000, unpublished.
realm; that was one of the risks of politics and the open discussion of ideas that characterised a democratic society”. Furthermore, the applicant’s reaction seemed to be influenced by the caustic, provocative tone of his adversary. But above all, in reproducing alongside the impugned editorial excerpts from the other party’s article, the newspaper director was acting in accordance with the rules of journalism. He thereby enabled readers “to form their own opinion by comparing the editorial concerned with the statements made by the person referred to in it” (para. 35). The Court found that the sentence against the journalist was not proportionate to the legitimate aim pursued and therefore constituted a violation of Article 10.

In October 2000, the Court delivered its judgment in the case of Du Roy and Malaurie, involving the conviction of a newspaper director and a journalist following the publication of an article concerning a criminal complaint together with an application to join the proceedings as a civil party. The Court confirmed the principle that journalists must not overstep the limits required for the proper administration of justice, such as the right of the defendant to be presumed innocent. In this case, however, the impugned interference consisted of a total and general ban on the publication of any type of information whatsoever. Furthermore, this measure, explained by the need to protect the reputation of others and the authority of the judiciary, was applicable only to a criminal complaint together with an application to join the proceedings as a civil party, not to proceedings initiated by the prosecuting authorities or following an ordinary complaint. In the opinion of the Court:

such a difference of treatment of the right to information seems to be based on no objective grounds, although it fully hindered the right of the press to inform the public about subjects which, although related to a criminal complaint together with an application to join the proceedings as a civil party, [might be] of public interest.52

This was the case in this instance as the impugned article targeted French political figures and their behaviour. The Court stressed that there were other ways of protecting the rights of the persons concerned without banning the publication outright. Accordingly the sentence was considered disproportionate to the aims pursued and in violation of Article 10.

51 Lopes Gomes Da Silva judgment of 28 September 2000, para. 34, unpublished.
2. Decisions and reports of the Commission and the Court

The Commission, for its part, has examined applications concerning the obstacles encountered by the press in certain countries in providing information on forthcoming radio and television programmes. In the case of Televizier v. the Netherlands, the question at issue was whether the copyright protection offered under the Netherlands Copyright Act to information on forthcoming radio and television programmes was compatible with the Convention. The case was declared admissible in 1968 but was dropped at the request of the applicant company.\(^{53}\)

However, a very similar case was referred to the Committee of Ministers, which, in 1977, agreed with the opinion of the Commission that there was no violation since the purpose of the Convention was not to protect the commercial interests of newspapers.\(^{54}\)

The Commission declared, in March 1991, that an application concerning the publication in the press of a memorandum by an investigating judge reporting the applicants' involvement in certain offences was inadmissible.\(^{55}\) In the Commission decision in April 1991, an application concerning a prohibition on broadcasting interviews with certain organisations, in particular a recognised political party, was ruled inadmissible.\(^{56}\)

In October 1991, the Commission held that there had been no violation of Article 10 concerning a second application brought in relation to the litigation arising out of the intended publication of memoirs of a former member of the British Security Services, in a book entitled Spycatcher (see the Observer and Guardian and Sunday Times (No. 2) cases on page 12).\(^{57}\)

In October 1992, the Commission considered a third application concerning the publication in the press of extracts from Spycatcher. In this case the applicants complained of the findings that they were in contempt of court

\(^{53}\) Appl. No. 2690/65, Televizier v. the Netherlands, Report of 3 October 1968, Yearbook 11, p. 782; application struck off the list.

\(^{54}\) Appl. No. 5178/71, de Geillustreerde Pers v. the Netherlands, Decision of 6 July 1976, D.R. 8, p. 5; Resolution of the Committee of Ministers DH (77) 1 of 17 February 1977.


\(^{56}\) Appl. No. 15404/89, Purcell and others v. Ireland, Decision of 16 April 1991, D.R. 70, p. 262.

in publishing the first extracts from the memoirs. The Commission declared
the application inadmissible.\textsuperscript{58}

In November 1994, the Commission declared admissible an application
concerning an injunction under the Unfair Competition Act prohibiting the
publication of certain parts of a cartoon offensive to the Austrian daily
newspaper \textit{Krone}.\textsuperscript{59}

In several decisions, the Commission and the Court have confirmed their
case law on racist, xenophobic and anti-Semitic statements.\textsuperscript{60} Referring
sometimes to Article 17 of the Convention\textsuperscript{61} and/or the exceptions to
Article 10, para. 2, the Commission and the Court have consistently
declared the applications inadmissible.\textsuperscript{62}

In June 1995, the Commission found that a disciplinary sanction of a fine
imposed on a lawyer for issuing a press release criticising the detention
conditions of his client and the conduct of the proceedings was necessary

\textsuperscript{58} Appl. No. 18897/91, Times Newspapers Ltd and A. Neil v. the United Kingdom, Decision of

\textsuperscript{59} Appl. No. 20915/92, Familiapress Zeitungs-GmbH v. Austria; Decision of 30 November 1994,
unpublished; but see the report of 3 March 1995, in which the application was struck off the list
because of non-respect of the confidentiality of the Commission’s proceedings, D.R. 80, p. 74.

\textsuperscript{60} For an analysis of older case law, see Council of Europe, \textit{Case law of the control organs of the
European Convention on Human Rights concerning the phenomenon of incitement to racial hate-

\textsuperscript{61} Article 17 states: “Nothing in this Convention may be interpreted as implying for any State, group
or person any right to engage in any activity or perform any act aimed at the destruction of any of
the rights and freedoms set forth herein or at their limitation to a greater extent than is provided
for in the Convention.”

\textsuperscript{62} See in particular Jersild judgment of 23 September 1994, Series A No. 298, para. 35; Appl. No.
25062/94, G. Honsik v. Austria, Decision of 18 October 1995, D.R. 83, p. 77; Appl. No. 25992/94,
26551/95, D.I. v. Germany, Decision of 26 June 1996, unpublished; Appl. No. 36773/97, H.
Witzsch v. Germany, Court decision of 20 April 1999, unpublished; Appl. No. 32307/96, H. J.
Schimanek v. Austria, Court decision of 1 February 2000, unpublished.
and proportionate for maintaining the authority and impartiality of the judiciary. The Commission therefore declared the application inadmissible.\textsuperscript{63}

The balance of interests may, in certain cases, afford greater protection for persons targeted by the criticism of journalists, especially when such criticism is aimed at private persons not holding any public office.\textsuperscript{64}

The Commission concluded that there had been a violation of Article 10 in the case of \textit{Wirtschafts-Trend Zeitschriften v. Austria}, in April 1998. The application concerned the injunction obliging a weekly publication to publish a judgment on the libellous nature of one of its articles criticising Austria’s asylum policy. The Commission considered that the facts on which the article complained of was based had been genuinely established, the value judgment being unamenable to proof.\textsuperscript{65}

In October 1998, the Commission declared inadmissible an application by a journalist who had been convicted of libel and publication of an underground periodical. In this case, the applicant had published two libellous articles, containing assertions he could not prove to be correct, in a periodical that had not been registered in accordance with the requirements of Italian law. Regarding the disputed articles, the Commission considered that “adequate and diligent previous research”, which the applicant could not show he had carried out, is one of the fundamental ethical principles of journalism.\textsuperscript{66} Concerning the obligation to register a newspaper or periodical, the Commission noted that the principal aim of the required formality was precisely to protect individuals against libellous acts. Consequently, the interference in the applicant’s right was “necessary in a democratic society”.

In December 1998, the Commission ruled on an application concerning refusal to register two magazines, thereby preventing their publication. First, the Commission noted that the provisions concerning the registration

\begin{itemize}
\item \textsuperscript{65} Appl. No. 26113/95, Wirtschafts-Trend Zeitschriften m.b.H. v. Austria, report of 16 April 1998; Committee of Ministers, Interim Resolution DH (98) 378 of 12 November 1998.
\end{itemize}
of periodicals gave the courts unlimited powers to determine the fate of applications for registration. In the Commission's opinion this system resembled a licensing system, for which provision was made exclusively in the fields of television and radio broadcasting and cinema. It therefore considered that strict application of the impugned measures was not compatible with the requirements of Article 10 of the Convention. Accordingly, the refusal to register the magazines was considered a violation of freedom of expression.\textsuperscript{67}

In October 1999, the Court declared admissible an application concerning the conviction of a journalist for having insulted a public personality.\textsuperscript{68}

In an application in October 1999, the applicant complained of the seizure of three issues of the magazine of which she was the owner and editor for allegedly disseminating separatist propaganda or inciting people to violence. The Court declared the application admissible.\textsuperscript{69}

In April 2000, the Court examined a case concerning the conviction of the applicant for defamation as a result of an open letter published in a newspaper claiming that a flat was unlawfully occupied. The application was declared admissible.\textsuperscript{70}

The Court declared admissible an application concerning the sentencing of a journalist to pay damages for quoting excerpts from an article containing disparaging allegations about a body of public servants.\textsuperscript{71}

In an application in June 2000, the owner of a magazine challenged his conviction for propaganda in favour of proscribed terrorist organisations, alleging that the measures taken against him constituted disproportionate interference with his rights under Article 10. The Court declared the application admissible.\textsuperscript{72}

\begin{itemize}
  \item \textsuperscript{67} Appl. No. 26229/95, J. Gaweda v. Poland, Report of 4 December 1998; pending before the Court.
  \item \textsuperscript{68} Appl. No. 41205/98, E. Tammer v. Estonia, Decision of 19 October 1999.
  \item \textsuperscript{70} Appl. No. 32686/96, V. Marônek v. Slovakia, Decision of 27 April 2000.
  \item \textsuperscript{71} Appl. No. 38432/97, M. Thoma v. Luxembourg, Decision of 25 May 2000.
  \item \textsuperscript{72} Appl. No. 34686/97, K.T. Sürek v. Turkey, Decision of 22 June 2000.
\end{itemize}
In September 2000, the Court examined an application concerning an injunction prohibiting an association from repeating the expression “racial agitation” in reference to an Austrian political party. The application was declared admissible.73

In October 2000, the Court declared admissible an application concerning the conviction for separatist propaganda of two trade union members and a journalist who had criticised the policy of the Turkish authorities in south-east Turkey in a statement in the press.74

In an application examined in October 2000, the author of an article published in a weekly newspaper alleged that his conviction for separatist propaganda was incompatible with Article 10 of the Convention. The Court declared the application admissible.75

B. In broadcasting

1. Judgments of the Court

The right to freedom of expression and information recognised in Article 10 includes, inter alia, freedom to receive and impart information and ideas by broadcasting media.76 With regard to radio and television broadcasting and the cinema, it is stipulated in the third sentence of Article 10, para. 1, that “this Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”.77

The Court delivered in March 1990 for the first time a judgment on electronic media, in the Groppera Radio AG and others case. It concluded that the prohibition imposed by the Swiss authorities on Swiss cable network operators on rebroadcasting programmes from Italy had not infringed...

74 Appl. Nos. 27692/95, 28138/95 and 28498/95, B. Z. Karakoç and others v. Turkey, Decision of 17 October 2000.
these companies’ right to impart information and ideas regardless of frontiers guaranteed by Article 10.

The Court decided in particular in this case that the prohibition had not gone beyond the margin of appreciation left to the national authorities to interfere in the exercise of freedom of expression, in so far as it was not a form of censorship directed against the content or tendencies of the programmes, but a measure taken against a station which the Swiss authorities could reasonably hold to be, in reality, a Swiss station operating from the other side of the border in order to circumvent the statutory telecommunications system in force in Switzerland.\(^{78}\)

In May 1990, the Court delivered its judgment in the *Autronic AG* case, in which it concluded that there had been a violation of Article 10. This case concerned the refusal of the Swiss authorities to authorise a company specialised in home electronics to receive, by means of a satellite dish, uncoded television programmes from a Soviet telecommunications satellite – a refusal based on the absence of the broadcasting State’s consent.

While noting that this refusal pursued a legitimate aim, namely the prevention of disorder in telecommunications and the need to prevent the disclosure of confidential information, the Court held that the Swiss authorities’ action fell outside the margin of appreciation authorising them to interfere in the exercise of freedom of expression.

The Court noted that the nature of the broadcasts in question in itself precluded describing them as not being intended for the general use of the public, the risk of obtaining secret information by means of dish aerials being non-existent. It can be noted that, on this occasion, the Court referred to technical and legal developments in the field of broadcasting by satellite, and notably to the European Convention on Transfrontier Television.\(^{79}\)

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

\(^{78}\) Groppera Radio AG and others judgment of 28 March 1990, Series A No. 173.

\(^{79}\) Autronic AG judgment of 22 May 1990, Series A No. 178.
In this case, the Court accepted that the Austrian monopoly system was capable of contributing to the quality and balance of programmes, through the supervisory powers over the media thereby conferred on the national regulatory authorities; it therefore had an aim consistent with the third sentence of Article 10, para. 1. However, the Court held that the interferences which the monopoly had brought about for the applicants were “not necessary in a democratic society”:

- the Court first recalled the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest, which the public is moreover entitled to receive;

- then the Court referred to the principle of pluralism, of which the State is the ultimate guarantor, and observed that this principle is especially important in relation to audiovisual media, whose programmes are often broadcast very widely;

- therefore, the Court held that the far-reaching character of the restrictions which a public monopoly imposes on freedom of expression means that they can only be justified if they correspond to a pressing need. Today, justification for these restrictions can no longer be found in considerations relating to the number of frequencies and channels available. The Court pointed furthermore to the multiplication of foreign programmes aimed at Austrian audiences and the lawfulness of their retransmission by cable in Austria. Above all, it cannot be argued that there are no equivalent less restrictive solutions, as is shown by the practice of some countries which either issue licences subject to specified conditions of variable content or make provision for private participation in the activities of the national corporation. Any fears that the Austrian market would be too small to sustain a sufficient number of stations to avoid regroupings and “private monopolies” were held to be groundless in view of the experience of other European States of a comparable size where private and public stations co-exist according to national rules accompanied by measures preventing the development of private monopolies.\(^80\)

\(^{80}\) Informationsverein Lentia and others judgment of 24 November 1993, Series A No. 276 paras. 32-33 and 38-42.
The *Telesystem Tyrol Kabeltelevision* case was struck off the Court’s list after a friendly settlement was reached between the government and the applicant. The Commission had drawn up a report establishing a violation of Article 10. The origin of the case lay in the government’s refusal to allow the applicant, which received television broadcasts and retransmitted them by cable, to broadcast information actively. Since the Commission’s report the Austrian Constitutional Court has legalised such broadcasts.\(^{81}\)

The *Radio ABC* case, which it heard in October 1997, led the Court once again to consider the broadcasting monopoly in Austria, as it had in the *Informationsverein Lentia* case. The Court concluded by noting “with satisfaction that Austria has introduced legislation to ensure the fulfilment of its international obligations”,\(^{82}\) namely a law on regional broadcasting, enacted in 1997, bringing the monopoly situation in Austria to an end.

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

For the period between 1996 and 1997, however, the Court found that there had been no violation of Article 10. It pointed out that following the decision of the Constitutional Court on 27 September 1995, private broadcasting companies had been free to create and transmit programmes by cable without restriction, while terrestrial broadcasting remained the preserve of the national broadcasting corporation. The applicant firm had criticised this situation, alleging that cable television was not comparable with terrestrial television in terms of its accessibility to viewers. The Court rejected this argument on the grounds that almost every home in Vienna could be connected to the cable network. Cable was therefore a viable alternative to terrestrial television for private broadcasters. The Court accordingly considered that the interference with the applicant company's

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\(^{81}\) Telesystem Tyrol Kabeltelevision judgment of 9 June 1997, Reports 1997-III.

right to communicate information was not disproportionate to the aims pursued by the constitutional law on broadcasting.  

2. Decisions and reports of the Commission and the Court

The question of licensing systems has also been touched upon in the case law of the Commission. In a decision dating from 1968, it stated that the term “licensing” in Article 10, para. 1, “cannot be understood as excluding in any way a public television monopoly as such”.  

In 1971, it declared an application inadmissible, considering that paragraph 1 did not prevent the State concerned from prohibiting private transmitters. 

However, in a decision reached in 1976 concerning the national cable monopoly in Italy, it expressed a willingness to reconsider its position in respect of national monopolies in the field of electronic media. 

In December 1978, in a case concerning criminal proceedings against persons who had tried, using stickers, to advertise illegal broadcasting, the Commission pointed out that a State must be able legitimately, according to the Convention, to adopt measures against those who attempt to circumvent the licensing requirements specifically referred to in Article 10, para. 1 in fine. 

In a decision of May 1984, the Commission considered inadmissible an application concerning the ban on certain television programme distributors preventing them from distributing programmes produced by the applicant. In its decision, the Commission stated that, since Article 10, para. 1, authorises the State to require the licensing of broadcasting enterprises, it is legitimate for that State to enact measures to prevent the circumvention of conditions attached to a particular licence. However, it

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83 Tele 1 Privatfernsehgesellschaft mbH judgment of 21 September 2000, unpublished.
86 Appl. No. 6452/74, Sacchi v. Italy (Telebiella case), Decision of 12 March 1976, D.R. 5, p. 43.
established as a principle that “the right to broadcast includes freedom from interference with the reception of radio broadcasts”.  

In the same vein, the Commission referred to licensing systems in March 1986, declaring inadmissible an application from presenters working for a radio station which had been broadcasting without obtaining the necessary licence from the Flemish Community of Belgium. It considered that:

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

However, in a decision of October 1986 concerning a complaint about a prohibition on granting a local broadcasting licence to stations fulfilling the legal conditions to obtain such a licence, the Commission considered that:

States do not have an unlimited margin of appreciation concerning licensing systems. Although broadcasting enterprises have no guarantee of any right to a licence under the Convention, it is nevertheless the case that the rejection by a State of a licence application must not be manifestly arbitrary or discriminatory, and thereby contrary to the principles in the preamble to the Convention and the rights secured therein. For this reason, a licensing system not respecting the requirements of pluralism, tolerance and broadbandness without which there is no democratic society would thereby infringe Article 10, para. 1, of the Convention.  

In May 1989, the Commission decided to communicate to the Swiss Government an application concerning a limitation on the reception of certain local radio stations for subsequent retransmission by cable. 

In June 1991, the Commission declared inadmissible another application concerning a cable network prohibited from retransmitting a radio programme. 

In July 1991, concerning the complaint of a non-profit-making broadcasting foundation at being obliged to pay financial compensation for radio and television coverage of football matches, the Commission held that the respondent government was not obliged under Article 10 to ensure a right to free reporting of such matches, as football matches were funded to a large extent by the entrance fees paid by the general public and by the fees paid by television and radio to obtain broadcasting rights to the matches. The application was therefore considered inadmissible.\(^{93}\)

In September 1992, the Commission declared inadmissible an application concerning the broadcast of radio programmes without authorisation. The applicant had complained of the ban and the subsequent seizure of material.\(^{94}\)

In January 1993, two applications were considered by the Commission involving the refusal and withdrawal of a broadcasting licence by the respondent government. The first dealt with the refusal by authorities to issue a broadcasting licence based on legislation stating that no individual could be granted such a licence.\(^{95}\) The second concerned the withdrawal of a broadcasting licence to non-profit-making associations after hearing of the intention to broadcast commercials. Both applications were considered inadmissible.\(^{96}\)

An application concerning a refusal to allocate frequencies for local low-power television stations was declared inadmissible by the Commission in July 1993. The measure was found to be necessary in a democratic society for the prevention of disorder and for the protection of the rights of others. The Commission attached special importance to the circumstance that the applicant in fact was trying to obtain a network of local TV authorisations which would cover a large part of the country’s territory.\(^{97}\)

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In October 1993, the Commission declared inadmissible an application concerning fines imposed for broadcasting indirect commercial messages in informative television programmes.\(^{98}\)

In November 1993 and January 1994, the Commission declared inadmissible two cases concerning prohibitions imposed on broadcasting companies to diffuse their programmes via the Dutch cable networks. It found that the prohibition was based on the maintenance of a pluralistic and non-commercial broadcasting system and on the protection of the diversity of expression of opinion in that system, and therefore pursued the legitimate aim of “the protection of the rights of others”. The applicant companies were not allowed to broadcast their programmes via the cable network as they were not considered to be “foreign broadcasting companies”.\(^{99}\)

In a case declared inadmissible in May 1994, the Commission accepted that a prohibition on broadcasting live interviews or spoken statements by persons representing or expressing support for organisations linked with Sinn Fein affected the way in which the applicant, a local councillor, was able to impart information. The prohibition therefore constituted an interference with his Article 10 rights.\(^{100}\)

In January 1997 the Commission declared inadmissible an application concerning the conviction of a television channel for broadcasting pictures of wall paintings in a theatre without paying royalties to the artist’s assigns.\(^{101}\)

\(^{8962/80, \ X. \ and \ Y. \ v. \ Belgium, \ Decision \ of \ 13 \ May \ 1982, \ D.R. \ 28, \ p. \ 112; \ Appl. \ No. \ 9720/82, \ Barraud \ v. \ France, \ Decision \ of \ 7 \ May \ 1984, \ unpublished.}\(^{98}\)

\(^{98 \ Appl. \ No. \ 16844/90, \ Nederlandse \ Omroepprogramma \ Stichting \ v. \ the \ Netherlands, \ Decision \ of \ 13 \ October \ 1993, \ unpublished.}\(^{99}\)

\(^{99 \ Appl. \ No. \ 18033/91, \ Cable \ Music \ Europe \ Ltd \ v. \ the \ Netherlands, \ Decision \ of \ 29 \ November \ 1993, \ unpublished; \ Appl. \ No. \ 21472/93, \ X. \ S.A. \ v. \ the \ Netherlands, \ Decision \ of \ 11 \ January \ 1994, \ D.R. \ 76, \ p. \ 129.}\(^{100}\)

\(^{100 \ Appl. \ No. \ 18714/91, \ Brind \ and \ others \ v. \ the \ United \ Kingdom, \ Decision \ of \ 9 \ May \ 1994, \ D.R. \ 77, \ p. \ 42; \ Appl. \ No. \ 18759/91, \ McLaughlin \ v. \ the \ United \ Kingdom, \ Decision \ of \ 9 \ May \ 1994, \ unpublished. \ In \ keeping \ with \ this \ previous \ decision, \ the \ Commission \ declared \ inadmissible \ an \ application \ concerning \ the \ exclusion \ order \ prohibiting \ the \ President \ of \ Sinn \ Fein \ from \ entering \ England \ following \ an \ invitation \ by \ a \ number \ of \ MPs \ and \ journalists: \ Appl. \ Nos. \ 28979/95 \ and \ 30343/96, \ G. \ Adams \ and \ T. \ Benn \ v. \ the \ United \ Kingdom, \ Decision \ of \ 13 \ January \ 1997, \ D.R. \ 88, \ p. \ 137.}\(^{100}\)

\(^{101 \ Appl. \ No. \ 30262/96, \ Société \ Nationale \ de \ Programmes \ France \ 2 \ v. \ France, \ Decision \ of \ 15 \ January \ 1997, \ unpublished.}\(^{100}\)
The Commission has considered that the freedom to impart information and ideas, included in the right to freedom of expression guaranteed by Article 10, cannot be taken to include a general and unfettered right for any private citizen or organisation to have access to broadcasting time on radio or television in order to express their point of view. It has indicated, however, that the denial of broadcasting time to one or more specific groups of persons may, in particular circumstances, raise a problem under Article 10 (considered in isolation or in conjunction with Article 14 prohibiting discrimination).  

Such a problem may, in principle, arise if, at election time for instance, one political party were excluded from broadcasting facilities while other parties were given broadcasting time. This broadcasting time may be subject nevertheless to certain criteria which are determined by the broadcasting company in the framework of its editorial policy.

In April 1997 the Commission declared inadmissible a case concerning the refusal to grant a licence to operate a television channel, holding that the decision was justified by the limited number of frequencies available, had been given due consideration and was not irrevocable.

The Commission has considered a number of applications concerning the unauthorised private installation of receiving aerials. These applications have been declared inadmissible.


It is important to stress that freedom to receive information and ideas via radio and/or television does not of itself require the licensing referred to in Article 10, para. 1. The granting of licences concerns only the transmission of programmes. This seems to have been confirmed implicitly by the Commission in a case in which it states that “the right to broadcast under Article 10 must be seen to include the right that the reception of the radio broadcasts are not interfered with”. The Commission recently confirmed its position by stating that the refusal to grant a licence for receiving and retransmitting foreign commercial television programmes, pending a decision on the promotion of regional programmes by the regional public broadcasting body which enjoyed a preferential right of limited duration, was justified by the third sentence of Article 10, para. 1. In this case, the emphasis was placed on retransmission, which was analysed as a broadcasting activity subject to licensing.

In October 1997, the Commission declared admissible an application concerning a five-day ban on broadcasting by a private television corporation, following the broadcast of a programme criticising programme censorship at election time.

In November 1999, the Court dismissed the application of the manager of a company which the CSA broadcasting authority had refused a licence to operate a local television service. In keeping with its established case law, the Court pointed out that the margin of appreciation in licensing systems was not unlimited. This means that refusal by a State to grant a broadcasting licence must not be clearly arbitrary or discriminatory. In this case the impugned decision had been based on the presentation and content of the project concerned, which did not match the competent authority’s idea of local television, in particular in respect of the criteria laid down by law. The Court also took into account the subsequent organisation of a call for tenders for a local television service in the region concerned and the fact

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110 Appl. No. 25685/94, M.B.I. A.S. v. Turkey, Report of 30 June 1998, unpublished; the Commission did not rule on the merits of the case as the company making the application decided to withdraw it. The case was struck off the list.
that the applicant had been awarded the licence. This approach was seen as an application of the principle of freedom to broadcast subject to licensing, a freedom guaranteed by the CSA. The Court concluded that the impugned decision had not been arbitrary and could be considered as a necessary measure in a democratic society for the defence of law and order and the protection of the rights of others.111

In January 2000, the Court struck off an application filed by Amnesty International concerning refusal of authorisation to broadcast a radio advertisement publicising human rights violations in certain countries. The impugned decision was based on broadcasting laws prohibiting advertising by organisations whose aims were primarily or solely political. The applicant organisation subsequently withdrew its complaint after reaching an agreement with the British authorities.112

The Court declared admissible an application concerning a refusal to broadcast a television advertisement denouncing the industrial breeding of certain animals. The authorities alleged that the film was clearly political.113

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

112 Appl. No. 38383/97, Amnesty International (United Kingdom) v. the United Kingdom, Decision of 18 January 2000, unpublished.
necessary in a democratic society to protect the rights and freedoms of others.\textsuperscript{114}

In an application examined in November 2000, a religious organisation complained that the competent authorities had refused to let it have an application form for a broadcasting licence. The decision was based on the law prohibiting the awarding of national broadcasting licences to religious organisations. The Court considered that this was not an arbitrary restriction as it applied to all those candidates who failed to meet the statutory requisites. Furthermore, nothing prevented the applicant from applying for a local broadcasting licence. The Court declared the application inadmissible.\textsuperscript{115}

C. Access to information

1. Judgments of the Court

In the \textit{Leander} case, the applicant complained that the Swedish authorities kept secret information on him which was not disclosed to him on grounds of national security. In its judgment in March 1987, the Court concluded that there had been no violation of Article 10.\textsuperscript{116}

The Court concluded in July 1989 that there has been no violation of Article 10 in the \textit{Gaskin} case. This case deals with an application against a refusal to communicate to the applicant a case-record which had been established when he was a minor by the local authority to which he had been entrusted.\textsuperscript{117}

In February 1998, the Court concluded that Article 10 was not applicable in the case of \textit{Guerra and others}. The applicants complained that the State had not informed the population of the risks run or of the measures to be taken in the event of an accident at a nearby chemical plant.\textsuperscript{118}

The Court first recalled its case law on restrictions on the freedom of the press, whereby it recognised the existence of the public's right to receive

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\textsuperscript{114} Appl. No. 38218/97, T. Brook v. the United Kingdom, Decision of 11 July 2000, unpublished.
\textsuperscript{115} Appl. No. 44802/98, United Christian Broadcasters Ltd v. the United Kingdom, Decision of 7 November 2000.
\textsuperscript{116} Leander judgment of 26 March 1987, Series A No. 116.
\textsuperscript{117} Gaskin judgment of 7 July 1989, Series A No. 160.
\textsuperscript{118} Guerra and others judgment of 19 February 1998, Reports 1998-I.
\end{flushleft}
information and the right of access to information which was likewise recognised in the *Leander* case and which “basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him”.\(^{119}\) The Court further stressed that:

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

In such circumstances, the freedom to receive information does not therefore impose positive obligations on the State to gather and disseminate information.

### 2. Decisions of the Commission

As to restrictions on access to information, the Commission examined in March 1987 two applications regarding restrictions imposed – by virtue of the 1981 British legislation on contempt of court – on the reporting by the applicants (namely, a journalist, a production company, a journalists’ union and a television channel) of criminal proceedings of importance for the public. The Commission declared these applications inadmissible under Article 10.\(^{120}\)

For the Commission, whereas Article 10, para. 1, concerns above all access to general sources of information, the fact that certain conditions are set for granting a journalist accreditation with a court does not in itself constitute interference in the right to receive and impart information.\(^{121}\)

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

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\(^{119}\) Leander judgment of 26 March 1987, Series A No. 116, p. 29 para. 74.


in a specific way (in this case, information on accession by Austria and Finland to the European Union).\textsuperscript{122}

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

\begin{quote}
Article 10 of the Convention does not give any person or firm the absolute right to access archives containing information on the financial situation of a third party, or require the authorities to communicate such information to anyone who so requests.\textsuperscript{123}
\end{quote}

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

\section*{D. Commercial statements}

\subsection*{1. \textit{Judgments of the Court}}

In the \textit{Markt Intern Verlag GmbH and Klaus Beermann} case, the Court concluded in November 1989 that there had been no violation of Article 10. The violation of this article was invoked by a German publishing firm and its editor-in-chief against a judgment of the Federal Court of Justice which had prohibited them, under the Unfair Competition Act, from repeating certain statements published in a specialised information bulletin, which criticised the business practices of a mail-order firm. After noting that “information of a commercial nature cannot not be excluded from the scope of Article 10, para. 1, which does not apply solely to certain types of information or ideas or forms of expression”,\textsuperscript{124} the Court decided that the prohibition ordered by the Federal Court of Justice had not gone beyond the margin of appreciation left to the national authorities in imposing, in

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accordance with Article 10, para. 2, formalities, conditions, restrictions or penalties on the exercise of freedom of expression.

In February 1994, the Court reaffirmed the applicability of Article 10 in matters of advertising, in its judgment in the case of Casado Coca. A disciplinary sanction against a lawyer for having advertised his professional services was held not to violate Article 10. The Court, considering that restrictions on advertising must be closely scrutinised, noted that the rules governing advertising by members of the Bar vary from one country to another. In most States parties, there has been a tendency to relax those rules as a result of societal changes and in particular the growing role of the media. The wide range of regulations and the different rates of change in the member States indicate the complexity of the issue. The Court held that the Bar authorities and the country’s courts are in a better position than an international court to determine how, at a given time, the right balance can be struck between the requirements of the proper administration of justice, the dignity of the profession, the right of everyone to receive information about legal assistance and affording members of the Bar the possibility of advertising their practices. At the time (1982/83), the disciplinary measure could not be considered disproportionate.\(^\text{125}\)

In the case of Jacubowski, the Court had another occasion to examine an application of the German Unfair Competition Law (cf. the above-mentioned Markt Intern Verlag GmbH and Klaus Beermann judgment). In its judgment delivered in June 1994, the Court found that the injunction restraining the applicant journalist from disseminating a circular letter containing adverse comments on a German news agency had not violated Article 10. The Court noted that the circular letter had been mainly designed to draw that news agency’s clients away to the new press agency which the applicant was planning to set up. The injunction went no further than to prohibit distribution of the circular, thus allowing the applicant to express himself by any other means. The German courts had therefore not overstepped their margin of appreciation.\(^\text{126}\)


For its part, the Commission considered in December 1978 that a State may take measures against those who attempt to circumvent the licensing requirements laid down in Article 10, para. 1.127

In May 1979, the Commission stated that it did not consider commercial “speech” as such to be outside the scope of the protection afforded by Article 10, para. 1. However, the view was taken that “the level of protection must be less than that accorded to the expression of ‘political’ ideas, in the broadest sense, with which the values underpinning the concept of freedom of expression in the Convention are chiefly concerned”.128

In March 1983, the Commission expressed more clearly the view that commercial speech is protected by the Convention. It noted that it had “earlier expressed the opinion that commercial advertisements and promotional campaigns are as such protected by Article 10, para. 1”.129

In December 1987, the Commission declared inadmissible an application concerning restrictions established by the French regulations governing the advertising of medicines, even where such advertising is aimed at health service professionals.130

In July 1990, the Commission declared inadmissible a case involving a ban on a dance school on using a misleading publicity slogan.131

In March 1991, the Commission considered a case concerning a reprimand issued against a lawyer for prohibited advertising of his services. The case was declared inadmissible.132

In January 1993, the Commission considered an application concerning the withdrawal by the Swedish Community Broadcasting Commission of the

applicants’ licences to broadcast community radio after hearing of their intention to broadcast commercials. The Commission declared the application inadmissible.\textsuperscript{133}

In October 1993, the Commission declared inadmissible an application concerning fines imposed on a broadcasting company for having broadcast indirect commercial utterances in the context of informative television programmes. In holding that the interference with the right under Article 10 did not go beyond the State’s margin of appreciation, the Commission took into account the target audience of the programmes (children), the position of the applicant in the national broadcasting system and the amounts of the fines.\textsuperscript{134}

In March 1999, the Court examined an application concerning a disciplinary sanction imposed on a lawyer for advertising his services. The Court reaffirmed that the special status of lawyers gives them a central position in the administration of justice as intermediaries between the public and the courts, which justifies the existence of a code of conduct to which they may be bound. In keeping with its earlier case law, the Court added that a country’s bar authorities and domestic courts are in a better position than an international court to determine how, at a given time, the right balance can be struck between the various interests involved. In this case the Court ruled that the measures taken against the applicant were not disproportionate and declared the application inadmissible.\textsuperscript{135}

E. Protection of general interest

1. Judgments of the Court

In the \textit{Handyside} case, the Court found, in December 1976, that the ban imposed under the Obscene Publications Act by the British authorities on a book called “Little Red School Book” was in conformity with the derogation set out in Article 10, para. 2, regarding the protection of morals. In that judgment – as with the subsequent \textit{Sunday Times} judgment – the

\begin{itemize}
\item \textsuperscript{133} Appl. No. 18424/91, Röda Korsets Ungdomsförbund and others v. Sweden, Decision of 15 January 1993, unpublished.
\item \textsuperscript{134} Appl. No. 16844/90, Nederlandse Omroepprogramma Stichting v. the Netherlands, Decision of 13 October 1993, unpublished.
\item \textsuperscript{135} Appl. No. 32813/96, K. Lindner v. Germany, Decision of 9 March 1999, unpublished.
\end{itemize}
Court emphasised the importance of freedom of expression in a democratic society:

Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to para. 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society.\(^{136}\)

In the *Müller and others* case, the Court decided, in May 1988, that the confiscation of paintings exhibited by a painter, and the sentencing of the artist and other applicants to a fine for obscene publications, constituted limitations on the exercise of the right to freedom of expression, which were “necessary in a democratic society” and therefore did not violate Article 10.

While specifying that freedom of expression includes freedom of artistic expression, even when the manifestations of this freedom of expression “offend, shock or disturb”, the Court considered that “in the circumstances” (there was completely free access to the exhibition, for which there was no admission charge or age-limit) and “having regard to the margin of appreciation” that might exist regarding the extent to which the impugned paintings were morally offensive, the authorities having decided upon confiscation and the imposition of a fine were entitled to consider such measures necessary for the protection of morals. With regard in particular to the confiscation measure, the Court considered that it was not disproportionate since it was not absolute but merely of indeterminate duration, the owner of the paintings being able to apply to have the confiscation order discharged or varied if the item in question no longer presented any danger or if some other, more lenient, measures sufficed to protect the interests of public morals.\(^{137}\)

In October 1992, the *Open Door Counselling Ltd and Dublin Well Woman* case was considered by the Court, which concluded that there had been a breach of Article 10, relating to restrictions placed on the applicant companies from providing information to pregnant women as to the

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\(^{136}\) Handyside judgment of 7 December 1976, Series A No. 24, para. 49.

\(^{137}\) Müller and others judgment of 24 May 1988, Series A No. 133.
location or identity of, or method of communication with, abortion clinics in Great Britain.

The applicant companies complained, inter alia, that the restriction constituted an unjustified interference with their right to impart information, guaranteed by Article 10. Although the ruling was “prescribed by law”, and pursued the legitimate aim of the protection of morals of which the protection in Ireland of the right to life of the unborn is one aspect, the Court concluded that the restraint imposed on the applicants was disproportionate.\textsuperscript{138}

In the \textit{Hadjianastassiou} case, in December 1992, concerning the conviction of the applicant for disclosure of military secrets and the rejection of an appeal as unsubstantiated, although he had not received the written reasons for his conviction within the 5-day limit for lodging an appeal, the Court decided there had been no violation of Article 10.\textsuperscript{139}

In the \textit{Chorherr} judgment of August 1993, the Court considered an application concerning the applicant’s arrest and detention after he had refused to stop distributing leaflets and exhibiting posters at a military parade. The Court considered that the interference was “prescribed by law” and that there were legitimate grounds based on Article 10, para. 2, (prevention of disorder) for holding that the interference was “necessary in a democratic society”.\textsuperscript{140}

In a judgment delivered in September 1994 in the \textit{Otto-Preminger-Institut} case, the Court held that Austrian judicial decisions ordering the seizure and confiscation of the film \textit{Das Liebeskonzil} by W. Schroeter did not constitute a breach of Article 10. The measures at issue were aimed at protecting the right of citizens not to be insulted in their religious beliefs by the public expression of the opinions of others. For the Court, given the circumstances of the case and the broad margin of appreciation enjoyed by the Austrian authorities, neither the seizure nor the confiscation was considered to be disproportionate to the aim pursued.\textsuperscript{141}

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\textsuperscript{138} Open Door Counselling Ltd and Dublin Well Woman judgment of 29 October 1992, Series A No. 246.
\textsuperscript{139} Hadjianastassiou judgment of 16 December 1992, Series A No. 252.
\textsuperscript{140} Chorherr judgment of 25 August 1993, Series A No. 266-B paras. 30-34.
\textsuperscript{141} Otto-Preminger-Institut judgment of 20 September 1994, Series A No. 295-A.
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In April 1995, the Court found that Article 10 had been violated in the *Piermont* case, which concerned a measure of expulsion from French Polynesia together with a prohibition on re-entry and a measure prohibiting entry into New Caledonia taken against a German member of the European Parliament. In this case, the Court ruled that “a fair balance was accordingly not struck between, on the one hand, the public interest requiring the prevention of disorder and the upholding of territorial integrity and, on the other, [the applicant’s] freedom of expression”.

In September 1995, the Court found that Article 10 had been violated in the *Vogt* case, which concerned the dismissal of a teacher from the civil service because of her political activities in the German Communist Party (DKP). The Court saw a difference between this case and the *Glasenapp* and *Kosiek* cases and held that the measure of dismissal constituted interference in the exercise of freedom of expression. Given the severity of the sanction and the behaviour of the applicant in the performance of her professional duties, the Court found that the measure at issue had been disproportionate to the legitimate aim pursued. Hence, the interference could not be considered necessary in a democratic society.

In November 1997, the Court found that there had been no violation of Article 10 in the *Zana* case. It held that convicting a former mayor for expressing his support for acts of terrorism in an interview could be justified under Article 10, para. 2. The Court considered that in this case the interference of the public authorities was designed to guarantee national security and public safety. In so far as the applicant did not distance himself clearly enough from the acts of violence perpetrated by the PKK in south-east Turkey, the sentence pronounced could be considered to be proportionate to the legitimate aim pursued and to respond to a “pressing social need”.

In November 1997, the Court held that there had been a violation of Article 10 in the *Grigoriades* case concerning the conviction of a conscript for insulting the army in a letter he sent to his superior officers. The Court began by referring to certain principles enshrined in its case law, including

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142 *Piermont* judgment of 27 April 1995, Series A No. 314, para. 77.
143 *Vogt* judgment of 26 September 1995, Series A No. 323.
144 *Zana* judgment of 25 November 1997, Reports 1997-VII.
the fact that “Article 10 does not stop at the gates of army barracks”\textsuperscript{145} and that legal rules designed to prevent the undermining of military discipline could not be used by national authorities “for the purpose of frustrating the expression of opinions, even if these are directed against the army as an institution” \textsuperscript{145} It is true that the contents of the letter in question included certain strong and intemperate remarks concerning the armed forces. However, the Court noted that “those remarks were made in the context of a general and lengthy discourse critical of army life and the army as an institution”. The letter was not directed specifically against either the recipient of the letter or any other person. Against such a background the interference with freedom of expression cannot be justified as within the meaning of paragraph 2 of Article 10.

In the \textit{Incal} case, the Court concluded that there had been a violation of Article 10. The applicant had been convicted for participating in the publication of leaflets criticising the local authorities' policy on workers, particularly those of Kurdish origin. The Court, recalling its decision in the Castells case,\textsuperscript{146} observed that “interferences with the freedom of expression of a politician who is a member of an opposition party, like the applicant, call for the closest scrutiny”.\textsuperscript{147} According to the Court, the appeals made in the leaflet “cannot, however, if read in context, be taken as incitement to the use of violence, hostility or hatred between citizens” (para. 50). Taking account of the fact that “in a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion (para. 54), the Court noted the radical nature of the interference complained of, which did not meet a “pressing social need”. In its conclusion, the Court considered that the circumstances of the present case were not comparable to those of the Zana case,\textsuperscript{148} since there was nothing “which would warrant the conclusion that Mr Incal was in any way responsible for the problems of terrorism in Turkey” (para. 58).

In the \textit{Steel and others} case, the Court considered that the demonstrations that led to the applicants being arrested should be viewed as an expression

\textsuperscript{146} Castells judgment of 23 April 1992, Series A No. 236, para. 42.
\textsuperscript{147} Incal judgment of 9 June 1998, Reports 1998-IV, para. 46.
\textsuperscript{148} Zana judgment of 25 November 1997, Reports 1997-VII.
of their disagreement with certain activities. They therefore fell under the scope of Article 10. In order to judge the need to restrict the applicants' exercise of freedom of expression, the Court examined the facts of the case and concluded that there had not been a violation of Article 10 in the case of the first two applicants. The physical obstruction of legal activities, in the present case a grouse shoot and the construction of a motorway, could justify the applicants being removed from the scene and detained. However, the Court considered that the authorities' detention of the three other applicants following a completely peaceful demonstration at a conference on board a combat helicopter was illegal and disproportionate, and therefore constituted a violation of Article 10.\(^\text{149}\)

In its judgment of the *Ahmed and others* case in September 1998, the Court considered that the restrictions on the political activities of local government civil servants did not constitute a violation of Article 10. In this case, the restriction concerned the political activities of local government officers and was applied legally under the 1989 Local Government and Housing Act.\(^\text{150}\) In the Court's opinion, the government's adoption of the measure complained of could be considered as a way of meeting the requirement that civil servants should remain impartial, and the measures adopted did not exceed the defending state's margin of appreciation.

In May 1999, in the *Rekvényi* case, the Court ruled on the prohibition forbidding career members of the police and the armed forces to join political parties and engage in political activities.\(^\text{151}\) The Court found that the restrictions designed to ensure the political neutrality of the police pursued legitimate aims, namely the protection of national security and public safety. It did not consider them disproportionate to the aims pursued, as members of the police still had the right to express their political opinions and preferences in other ways. For example, they could expound election programmes, organise election campaign meetings, vote in and stand for elections to Parliament and also join trade unions. In these circumstances the restrictions did not appear excessive. They therefore did not violate Article 10 of the Convention.

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\(^{149}\) Steel and others judgment of 23 September 1998, Reports 1998-VII.

\(^{150}\) Ahmed and others judgment of 2 September 1998, Reports 1998-VI.

\(^{151}\) Rekvényi judgment of 20 May 1999, Reports 1999-III.
The Court ruled in its judgments of 8 July 1999 that there had been a breach of Article 10 of the Convention in the cases of Arslan, Polat, and Gerger. The applicants were convicted of propaganda against the integrity of the State after having criticised the State’s action in south-east Turkey in publications or statements. The Court acknowledged that in the event of incitement to violence, State authorities enjoy a wider margin of appreciation when examining the need for interference with freedom of expression. However, it recalled that that “there is little scope under Article 10 para. 2, of the Convention for restrictions on political speech” and that the limits of permissible criticism are wider with regard to the government than in relation to a private citizen or even a politician.

In these three cases, the impugned messages were not an incitement to violence in spite of the hostile connotation of certain passages or the use of words like “resistance”, “struggle” and “liberation”. The Court observed that the fact that the messages were either read out at a ceremony or published in a literary work considerably restricted their potential impact on “national security” or “territorial integrity”. In view of these considerations and of the severity of the sanctions imposed, the Court ruled that the conviction of the applicants was disproportionate to the aims pursued.

In the Karataş judgment of 8 July 1999, the applicant’s conviction for propaganda against the indivisibility of the State following the publication of a collection of his poems was found to constitute a breach of Article 10 of the Convention. Referring to its existing case law, the Court confirmed that Article 10 protects freedom of artistic expression and guarantees not only the substance of the ideas but also the means of expression. The Court observed that poetry is by definition addressed to a very small audience, which “limits its potential impact on national security, public order or territorial integrity to a considerable degree”. It further considered that “even though some of the passages from the poems seem very aggressive in tone and to call for the use of violence, the fact that they were artistic in nature and of limited impact made them less a call to an uprising than an expression of deep distress in the face of a difficult politi-

152 Arslan judgment of 8 July 1999, unpublished.
cal situation” (para. 52). Consequently, it found that the applicant's conviction was disproportionate to the legitimate aims pursued.

In July 1999, in the Baskaya and Okçuoglu case, the Court ruled on the conviction of the applicants for propaganda against the indivisibility of the State following the publication of a university study criticising the “official ideology of the State”. While sensitive to the government's arguments concerning the fight against terrorism in Turkey, the Court noted that the authorities failed to have sufficient regard to freedom of academic expression and to the public's right to be informed of a different perspective on the situation in the south-east of the country. The impugned publication did not constitute an incitement to violence. Recalling that the limits of permissible criticism are wider with regard to the government than in relation to a private citizen, or even a politician, the Court concluded that the conviction of the applicants was disproportionate to the legitimate aims pursued and was in breach of Article 10 of the Convention.  

In October 1999, in the Wille case, the Court found that the announcement by the Prince of Liechtenstein of his intention not to appoint the applicant to public office following statements he had made was a breach of Article 10 of the Convention. The applicant had expressed his views on a matter of interpretation of the Constitution in the course of a lecture.

First, the Court decided that there had been interference with the applicant's freedom of expression. The Prince's announcement of his intention not to reappoint the applicant to a public post constituted, according to the Court:

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

The Court then considered whether the impugned measure was necessary in a democratic society. It noted that it can be expected of public officials serving in the judiciary (the applicant was a high-ranking judge at the time) that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of judiciary are likely to be called in question. However, the fact that the lecture in question had

156 Baskaya and Okçuoglu judgment of 8 July 1999, Reports 1999-IV.
political implications should not have prevented the applicant from expressing his views. The opinion expressed by the applicant cannot be regarded as an untenable proposition since it was shared by a considerable number of persons. The applicant did not comment on pending cases, severely criticise persons or public institutions or insult high officials or the Prince. Moreover, there is no evidence that the views expressed by the applicant in his lecture had any repercussions on his performance of his duties or on any pending or imminent cases. Nor had it been proved that the applicant had acted in any reprehensible manner in or outside the sphere of his judicial duties. The Court therefore found that the interference was not necessary in a democratic society.

In the Aksoy case, judged in October 2000, the applicant, a writer and former member of parliament, had been convicted three times of separatist propaganda because of statements he made about the situation in south-east Turkey. In all three cases the Court concluded that there had been a violation of Article 10 of the Convention.

The first conviction followed a speech made by the applicant at a political party conference. The Court recalled that “freedom of expression, which is precious to every individual, is particularly precious to an elected representative of the people”. In this case the applicant expressed himself in his capacity as member of parliament and secretary general of a political party, in his role as an actor on the Turkish political scene, and […] the speech concerned […] did not incite to violence, armed resistance or revolt (para. 62).

Unlike the Government, the Court further considered that the impugned statements were not racist. In the Court’s opinion the applicant had stressed the existence of a people and his speech amounted to “a call for the recognition of that people’s rights” (para. 64). Consequently, his conviction was considered disproportionate to the aims pursued.

The applicant was convicted a second time because of an article published in a weekly magazine. The Court recalled the essential role of the press in a democracy. The applicant had expressed himself as a politician; he had not encouraged the use of violence. On the contrary, the purpose of his article, based on information disseminated by independent or public organisations,

had been to alert public opinion. The sentence was once again considered disproportionate to the aims pursued.

The third conviction followed the publication of a brochure concerning the question of a people’s right to self-determination. The impugned text was not an incitement to violence. The Court recalled in this respect that “it is essential in a democracy to permit the proposal and discussion of different political projects, even those challenging the present organisation of the State, provided that they do not undermine democracy itself” (para. 78). The Court decided that the third impugned conviction was also in violation of Article 10 of the Convention.

2. Decisions and reports of the Commission and the Court

In September 1989, the Commission declared inadmissible an application concerning the dismissal of a doctor employed in a Catholic hospital on account of statements he had made regarding abortion. The applicant claimed that there had been a violation of his freedom of expression as guaranteed by Article 10.\(^{159}\)

In April 1991, the Commission considered an application concerning the applicants' conviction for renting or selling obscene video films. The Commission held that the interference was justified for the protection of morals and necessary in a democratic society.\(^{160}\)

In October 1992, the Commission declared there had been no violation of Article 10 regarding limitations imposed on a doctor for advertising his private medical practice in the press, and that they were not disproportionate to the legitimate aim of protecting patients' health, as well as the rights of others, namely other doctors.\(^{161}\)

In a report of April 1995, the Commission unanimously found to be a violation of Article 10 the conviction for infringement of public order of a political leader of the Muslim minority of western Thrace for having handed out, during an election campaign, leaflets in which the Muslim


\(^{161}\) Appl. No. 16632/90, R. Colman v. the United Kingdom, Report of 19 October 1992, Series A No. 258-D, p. 112 followed by the friendly settlement before the Court, judgment of 28 June 1993, Series A No. 258-D.
population of the region was described as Turkish. The Commission noted the importance of freedom of expression for representatives of the people and concluded that the interference was neither proportionate to the aim pursued nor justifiable under Article 10, para. 2.  

In its report of June 1999, the Commission ruled on an application concerning the living conditions of Greek Cypriots in the north of Cyprus. The applicant State challenged the ban on importing Greek-language newspapers and the censorship of primary school books.

Concerning the first allegation, the Commission found that there had been no breach of Article 10 of the Convention as the existence of such restrictions had not been proven.

In respect of the second allegation, however, the Committee concluded that there had been a violation of Article 10 as it had not been demonstrated that the censorship measures were necessary in a democratic society. Furthermore, the Commission found it virtually impossible to envisage circumstances in which books on mathematics, science or Christianity could possibly constitute a threat to public order.  

In its October 1999 report, the Commission decided that the conviction of the applicant (a former member of a political party proscribed by the Constitutional Court) for separatist propaganda because of statements concerning the situation in the south-east of Turkey constituted a breach of Article 10 of the Convention. Although they contained terms like “struggle”, “liberation” and “the right to self-determination”, it considered that the impugned statements were not an incitement to violence. Furthermore, the mere fact that the applicant had criticised the way in which the forces of order were combating the PKK did not make him a terrorist. Nor could he be faulted for having defended, without condoning violence, principles already used by the PKK but which were not in themselves contrary to the values of democratic society. The Commission also noted the severity of the penalty. In the light of all these considerations,

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the applicant's conviction was found to be disproportionate to the legitimate aims pursued.\textsuperscript{164}

In June 1999, the Court examined an application concerning refusal to allow a Member of Parliament to sit in the House of Commons and enjoy certain privileges on the grounds that he had refused to take an oath of allegiance to the British Crown. The Court first decided that the impugned requirement pursued a legitimate aim as it represented a statement of loyalty to the constitutional principles of the respondent State. The Court then determined that the measures taken were not disproportionate as the impugned oath was a reasonable requirement in relation to the country's constitutional system. Moreover, there was nothing to prevent the applicant from expressing his views in another context. Accordingly, the application was declared inadmissible.\textsuperscript{165}

In June 1999, the Court declared admissible an application concerning the conviction of the applicant for propaganda against the integrity of the State following the publication of his works on Kurdish culture.\textsuperscript{166}

In an application examined in January 2000, an association for the protection of the Basque culture challenged a ruling prohibiting it from distributing a book in France about the various aspects of the Basque struggle. The ruling was based on a law authorising the Minister of the Interior to prohibit the circulation, distribution or sale in France of publications in foreign languages or of foreign origin. The association considered that it had been the victim of discrimination incompatible with Article 10. The Court declared the application admissible.\textsuperscript{167}

In January 2000, the Court declared inadmissible an application concerning the refusal of a court of appeal to allow a former terrorist to be interviewed by journalists before the end of her trial. The statements made by the applicant during her trial were ambiguous. While criticising the past activities of the organisation of which she was a member, she clearly admitted her belief in its ideology. The Court emphasised that these

\textsuperscript{164} Appl. Nos. 25143/94 and 27098/95, S. Yurttas v. Turkey, Report of 27 October 1999, pending before the Court.

\textsuperscript{165} Appl. No. 39511/98, M. McGuinness v. the United Kingdom, Decision of 8 June 1999, Reports 1999-V.

\textsuperscript{166} Appl. No. 27307/95, M. Bayrak v. Turkey, Decision of 8 June 1999.

statements were not, in themselves, an incitement to terrorism. However, in the light of the applicant's personal background, they could be interpreted by sympathisers as an appeal to continue the terrorist fight. The Court concluded that the restrictions were a reasonable response to a pressing social need and were proportionate to the aims pursued.\textsuperscript{168}

In February 2000, the Court found admissible an application concerning the applicant’s conviction for propaganda against the territorial integrity of the State following statements made before the European Parliament and at a press conference.\textsuperscript{169}

In April 2000, the Court examined the application of a teacher who had been arrested as he prepared to give a press conference. The Court noted that the fact that the arrest prevented the applicant from giving a press conference did not violate his right to freedom of expression, especially as the purpose of the arrest was not to prevent him from speaking to the press.

Assuming that the fact that the applicant was prevented from giving a press conference constituted an interference with his freedom of expression, this interference was the direct consequence of a legal arrest ordered in the framework of criminal proceedings and necessary for the needs of the investigation. As such, it was justified under Article 10, para. 2. The Court therefore dismissed the application.\textsuperscript{170}

In May 2000, the Court ruled on the admissibility of a case concerning the conviction of the applicants for disturbing a lawful whaling expedition by placing themselves between the whale and the whaler. The court noted that the applicants' purpose had not been simply to express their disagreement with whaling but actually physically to put a stop to it. This was tantamount to coercion preventing the fishermen from doing their job. For the Court, the interference here concerned behaviour which was not entitled to the same protection as the expression of political opinions, the discussion of questions of general interest or the peaceful demonstration of opinions on such issues. On the contrary, the Court considered that the Contracting Parties should enjoy a large margin of appreciation in evaluating the need to take measures to restrict this type of behaviour. It stressed

\begin{itemize}
\item \textsuperscript{168} Appl. No. 35402/97, B. E. Hogefeld v. Germany, Decision of 20 January 2000, unpublished.
\item \textsuperscript{169} Appl. No. 26982/95, M. Zana v. Turkey, Decision of 15 February 2000.
\item \textsuperscript{170} Appl. No. 49392/99, Ch. Debbasch v. France, Decision of 27 April 2000, unpublished.
\end{itemize}
that the purpose of the conviction had been to ensure the effective application of legal protection of the lawful exploitation of live resources within the exclusive economic zone of the respondent State. For these reasons the application was declared inadmissible.\textsuperscript{171}

In another case examined in May 2000, the applicants complained that they had been removed from parliamentary office following the dissolution of their political party. The Court declared the applications admissible.\textsuperscript{172}

In September 2000, the Court ruled that the conviction of the applicant, a politician, for disseminating separatist propaganda catered for a pressing social need and was proportionate to the aims pursued. In this case the remarks made by the applicant in a speech about the problems in southeast Turkey could be interpreted as inciting people to violence or encouraging armed resistance. The application was dismissed.\textsuperscript{173}

In December 2000, the Court examined a case concerning the death sentence pronounced against the applicant, the leader of the PKK, for activities aimed at the secession of part of Turkish territory and for forming and leading a band of armed terrorists for that purpose. The applicant alleged violation of several articles of the Convention, including Article 10. The Court found the application admissible.\textsuperscript{174}

\textbf{F. Protection of other individual rights}

\textit{1. Judgments of the Court}

In September 1994, the Court delivered a judgment finding a violation of Article 10 in the \textit{Jersild} case, in which a journalist had been convicted by the Danish domestic courts for granting an interview to a group of young people in the course of which they made racist remarks. For the Court, the purpose of the report could not objectively have been to propagate racist ideas and opinions:

\textsuperscript{173} Appl. No. 29851/96, M. Zana v. Turkey, Decision of 19 September 2000, unpublished.
... the methods of objective and balanced reporting may vary considerably, depending among other things on the media in question. It is not for this Court, nor for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists.\textsuperscript{175}

According to the Court,

the punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so (para. 35).

In November 1996, the Court held that the refusal by the British Board of Film Classification to grant a classification certificate for the video \textit{Visions of Ecstasy}, written and produced by the applicant, which it considered to be blasphemous, was not in violation of Article 10. According to the Court, in such cases State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements with regard to the protection of the rights of others.\textsuperscript{176}

In the \textit{Bowman} case in February 1998, the Court considered that the proceedings brought for a breach of the Representation of the People Act after the applicant had distributed, during the period before an election, leaflets setting out each candidate's views on abortion and experiments carried out on embryos, were a violation of Article 10. According to the Court, the provision at issue did not directly restrain freedom of expression, but did result in a limitation of it. Where elections are concerned, Article 10 must be interpreted in the light of the rights protected by Article 3 of Protocol No. 1 to the Convention,\textsuperscript{177} for in the Court's opinion "the two rights are inter-related".\textsuperscript{178} As regards the facts of the case, the Court concluded that the domestic legal provision "operated, for all practical purposes, as a total barrier" to the publication of certain information designed to further the applicant's aims (para. 47). In the Court's opinion:

\textsuperscript{175} Jersild judgment of 23 September 1994, Series A No. 298, para. 31.


\textsuperscript{177} Article 3 of Protocol No. 1 provides that "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

\textsuperscript{178} Bowman judgment of 19 February 1998, Reports 1998-I, para. 42.
individual freedom of expression, as a key ingredient of a democratic soci-
ty, must be considered inextricably linked with a free election system and
cannot be excluded without convincing justification.

In the Janowski case, judged in January 1999, the Court considered that
the criminal conviction of the applicant following insults to two municipal
guards did not constitute a violation of Article 10. In this respect, the Court
stressed that “civil servants must enjoy public confidence in conditions free
of undue perturbation if they are to be successful in performing their
tasks”.¹⁷⁹ Although less closely scrutinised than that of politicians, the
reputation of civil servants is protected against injurious or insulting verbal
attacks which exceed the limits of acceptable criticism.

In November 1999, the Court found that there had been a breach of
Article 10 in the Nilsen and Johnsen case. The two applicants (representa-
tives of Norwegian police trade union organisations) were convicted of
defamation as a result of statements they made in response to various
books written by a professor concerning police brutality in Bergen. Accord-
ing to the Court, one of the impugned allegations could be regarded as an
allegation of fact susceptible of proof, for which there was no factual basis
and which could not be warranted by the author’s way of expressing
himself. Declaring it null and void was therefore not in breach of Article 10
of the Convention. The other statements, however, imputing improper
motives or intentions to the professor, were considered, in view of their
wording and the context, as value judgments. The Court noted that there
existed at the material time certain objective factors supporting the appli-
cants’ questioning of the professor’s investigations. Furthermore, the Court
acknowledged the applicants’ right to “hit back in the same way”¹⁸⁰ at the
brutal criticism of the police. It also pointed out that the impugned state-
ments had been uttered in the context of a heated and continuing public
debate of affairs of general concern, where on both sides professional
reputations were at stake. Consequently a degree of exaggeration should
be tolerated. The Court ruled that the applicants’ conviction was dispro-
portionate to the legitimate aim pursued.

In February 2000, the Court found that there had been a violation of
Article 10 in the Fuentes Bobo case concerning the dismissal of a pro-

gramme director for uttering offensive remarks about the managers of a Spanish public television channel during an interview.

The Court recalled that Article 10 applied to all employer-employee relations, even those falling within the realm of private law, and that it was the positive obligation of the State, in certain cases, to protect the right to freedom of expression.

The Court further stressed that “Article 10 of the Convention does not guarantee unrestricted freedom of expression, even in press reports on serious questions of general interest”. In this case the use of such terms as “leeches” in respect of certain managers was undeniably likely to harm their reputations and warranted punishment. However, the impugned declarations were part of a heated public debate concerning alleged management problems in public television. They had previously been made “by radio programme presenters, the applicant confining himself to confirming them […] during a rapid, spontaneous exchange” (para. 48). Furthermore, no suit for slander or defamation had been filed by the persons concerned. In the opinion of the Court, termination of the applicant’s employment contract with no compensation was a measure “of extreme severity, whereas other, less harsh and more appropriate disciplinary measures could have been envisaged” (para. 49).

In the Wabl case, the Court found that there had been no violation of Article 10. An MP for the Green party in the Austrian Parliament had objected to an order restraining him from repeating the expression “nazi journalism”, which he had used in reference to an article injurious to his reputation. The Court acknowledged the defamatory nature of the publication and the MP’s right to take offence. Furthermore, the existence of a debate of general interest was questionable.

However, it was decided that the national authorities had duly weighed the interests at stake bearing in mind the “special stigma which attaches to activities inspired by National Socialist ideas”. The Court also noted that the applicant had not taken action against the newspaper and had not used the impugned expression immediately but a few days after the article

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was published. Furthermore, the limited scope of the restraint left him at liberty to express his opinion of the newspaper article in other terms.

The Constantinescu case, judged in June 2000, concerned the conviction of the president of a teachers’ trade union for defamation for calling three teachers “thieves” (“delapidatori”) after the case against them for the offence concerned had been dismissed. The Court pointed out that the right to freedom of expression had its limits even if the statements concerned were part of a debate on the independence of the unions and the functioning of the judiciary, which were questions of public interest. The applicant was required to keep within certain limits, in the interest, in particular, of the protection of the reputations and the rights of others, notwithstanding his position as union representative. After acknowledging the defamatory nature of the impugned statements, the Court considered “that it was quite feasible for the applicant to express criticisms and thereby contribute to the free public discussion of trade union issues without using the word ‘delapidatori’”. 183 The Court therefore concluded that there had been no violation of Article 10.

2. Decisions of the Commission and the Court

The Commission declared an application inadmissible in February 1995 and found that an injunction prohibiting an opponent of abortion from handing out leaflets in the vicinity of a clinic where abortions are practised was necessary for the protection of the rights of others. 184

The Commission and the Court have had occasion to underscore the importance of the protection of the reputation or rights of others. In the cases concerned, the Commission and the Court weighed the interests involved and analysed the position of the victim and the circumstances in which the offensive remarks were made by the applicants. 185

183 Constantinescu judgment of 27 June 2000, para. 74, unpublished.
In January 2000, the Court examined an application concerning the dismissal of an employee of the Austrian federal railway company for criticising his employer in tracts and in a letter published in a magazine. The Court noted that the applicant had not taken part in a discussion on problems of public interest but had publicly harshly criticised the services of his employer in terms likely to harm the latter’s reputation in the eyes of its clients. The disciplinary sanction concerned was therefore considered necessary in a democratic society and proportionate to the aim pursued. The Court declared the application inadmissible.\textsuperscript{186}

In May 2000, the Court examined a case concerning the applicants’ conviction for defamation due to their repeated public accusations against a judge and several public officials. It was pointed out that in order to do their job properly public officials required the public’s trust and needed to be able to work without undue disturbance. In this respect the Court stressed the need to protect them against verbal attacks and abuse concerning their work. In this case the need for protection did not have to be evaluated in reference to a subject of public interest or the freedom of the press as the impugned criticisms had not been made in such a context. The Court noted that the convictions were based on the highly injurious nature of the accusations. It follows that the interference with the applicants’ rights was proportionate to the legitimate aims pursued. The application was declared inadmissible.\textsuperscript{187}

In a case examined in June 2000, a writer had been punished for statements in which he had used the term “fascist” to qualify a minister’s past. The Court declared the application admissible.\textsuperscript{188}

\textsuperscript{186} Appl. No. 28962/95, R. Predota v. Austria, Decision of 18 January 2000, unpublished.
\textsuperscript{187} Appl. No. 32051/96, A. Jääskeläinen and others v. Finland, Decision of 4 May 2000, unpublished.
\textsuperscript{188} Appl. No. 29032/95, L. Feldek v. Slovakia, Decision of 15 June 2000.
In June 2000, the Court examined a case concerning an order prohibiting the applicant, a municipal councillor, from repeating remarks in which she referred to two associations as “psycho-sects” of a “totalitarian character”. It declared the application admissible.\(^{189}\)

G. Maintaining the authority and impartiality of the judiciary

1. *Judgments of the Court*

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

The Court reiterated the specific status of lawyers who, holding a central position in the administration of justice, are intermediaries between the public and the courts. According to the case law of the Court, that being the case, lawyers play a “key role”\(^{190}\) in this field. In the Court’s opinion, lawyers are expected:

> to contribute to the proper administration of justice, and thus to maintain public confidence therein. [...] It also goes without saying that freedom of expression is secured to lawyers too, who are certainly entitled to comment in public on the administration of justice, but their criticism must not overs-step certain bounds. In that connection, account must be taken of the need to strike the right balance between the various interests involved, which include the public’s right to receive information about questions arising from judicial decisions, the requirements of the proper administration of justice and the dignity of the legal profession (para. 33).

In view of this, the Court considered that the disciplinary penalty imposed on the applicant was necessary in a democratic society.

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2. Decisions of the Commission and the Court

In January 1996, the Commission found that a judicial decision ordering the BBC to communicate films made during a riot to the lawyers for the defence in criminal proceedings did not constitute a violation of Article 10. The Commission first stressed the difference between this case and the Goodwin case mentioned earlier. In the latter, the information required was confidential, whereas in this case the information only concerned the recording of events that had taken place in public to which no secrecy or confidentiality could be attributed. Moreover, the provision of evidence is a normal civic obligation in a democratic society that is necessary for maintaining the authority and impartiality of the judiciary, given that there was no indication of any risk to the journalists.\footnote{191}

In September 1999, the Court examined two cases concerning the prohibition on the applicants disclosing any information about proceedings concerning the granting of child custody. The Court declared the applications admissible.\footnote{192}

In an application examined in April 2000, a public prosecutor complained that he had been dismissed as a result of written statements criticising the Minister of the Interior and a political party. The Court recalled that the rights guaranteed under Article 10 of the Convention also apply to public servants. However, the Court made a distinction between this case and the Vogt case. In this present case the applicant had continued, in spite of warnings, to behave in a manner incompatible with the impartiality required of someone in his position. He had been less discreet in his political comments and, what is more, he had infringed the rules governing sick leave. The Court stressed that the public's confidence in the independence of the judiciary must not be undermined by the behaviour of a few public officials. The application was declared inadmissible.\footnote{193}

\footnote{192 Appl. No. 36337/97, A. Bayram v. the United Kingdom, and Appl. No. 35974/97, M. J. Pelling v. the United Kingdom, Decision of 14 September 1999.}
\footnote{193 Appl. No. 39822/98, H. Altin v. Turkey, Decision of 6 April 2000, unpublished.}
2. Main judgments, decisions and reports

A. Judgments of the European Court of Human Rights

De Becker v. Belgium: judgment of 27 March 1962, Series A No. 4
  lifelong prohibition on the applicant in Belgium from exercising the professions of journalist or author; struck off the list

Engel and others v. the Netherlands: judgment of 8 June 1976, Series A No. 22
  disciplinary penalty imposed on Dutch servicemen for the publication of articles undermining military discipline; non-violation of Article 10

Handyside v. the United Kingdom: judgment of 7 December 1976, Series A No. 24
  ban by the British authorities of the book entitled “Little Red School Book” under the Obscene Publications Act; non-violation of Article 10

Sunday Times (No. 1) v. the United Kingdom: judgment of 26 April 1979, Series A No. 30
  injunction restraining the publication of an article concerning a drug and the ensuing litigation, this injunction being based on the English law at the time on contempt of court; violation of Article 10

  prohibitions on a veterinary surgeon in the Federal Republic of Germany – under the Unfair Competition Act and the Rules of Professional Conduct – from making certain statements in the popular press; violation of Article 10

Lingens v. Austria: judgment of 8 July 1986, Series A No. 103
  fining the applicant for having defamed an Austrian politician in a newspaper article; Article 111 of the Austrian Criminal Code; violation of Article 10

  obligation to swear allegiance to the Constitution in order to be appointed as a civil servant in Germany; non-violation of Article 10

  ban on access by the applicant to secret information concerning him kept by the Swedish authorities, allegedly on grounds of national security; non-violation of Article 10
Müller and others v. Switzerland: judgment of 24 May 1988, Series A No. 133
confiscation by the Swiss authorities of paintings exhibited by a painter and sentencing of him and other applicants to a fine for obscene publications; non-violation of Article 10

Barfod v. Denmark: judgment of 22 February 1989, Series A No. 149
fining the applicant for having defamed two lay judges in a newspaper article, under Article 71 of the Greenland Criminal Code; non-violation of Article 10

Gaskin v. the United Kingdom: judgment of 7 July 1989, Series A No. 160
refusal by the British administrative authorities concerned to communicate to the applicant a case record which had been established during his minority by the local authority to which he had been entrusted; non-violation of Article 10

prohibition, under the German Unfair Competition Act, on a publishing firm from repeating certain statements published in a specialised information bulletin, criticising the business practices of a mail-order firm; non-violation of Article 10

prohibition made in Switzerland on a firm, holder of a collective antennae concession to retransmit by cable programmes which are broadcast from Italy; non-violation of Article 10

Weber v. Switzerland: judgment of 22 May 1990, Series A No. 177
judicial proceedings in Switzerland conducted in camera and having resulted in the conviction of a journalist for breaching, during a press conference, the secrecy of investigation for a pending libel action; violation of Article 10

Autronic AG v. Switzerland: judgment of 22 May 1990, Series A No. 178
refusal of the Swiss PTT, due to the lack of consent of the transmitting State, to authorise a firm specialised in domestic electronics to receive, by means of a private dish aerial, uncoded television programmes intended for the general public and transmitted by a Soviet telecommunications satellite; violation of Article 10

Oberschlick (No. 1) v. Austria: judgment of 23 May 1991, Series A No. 204
libel action brought against the applicant by an Austrian politician and subsequent conviction of the applicant; violation of Article 10

The Observer and Guardian Newspapers Ltd v. the United Kingdom: judgment of 26 November 1991, Series A No. 216
prohibition on disclosing or publishing details of unauthorised memoirs alleging unlawful conduct by British Security Services and information obtained from their author, a former employee of the Service – restrictions maintained by courts in July 1987, after book had been published in the United States and become available in the United Kingdom, and remaining in force until trial concluded in October 1988;
violation of Article 10 in the second period (July 1987 – October 1988) but not in the first (July 1986 – July 1987)

Sunday Times (No. 2) v. the United Kingdom: judgment of 26 November 1991, Series A No. 217
prohibition on disclosing or publishing details of unauthorised memoirs alleging unlawful conduct by British Security Services and information obtained from their author, a former employee of the Service; violation of Article 10

Castells v. Spain: judgment of 23 April 1992, Series A No. 236
conviction of a militant Basque politician for publication of an article hostile to the Government; violation of Article 10

Thorgeir Thorgeirson v. Iceland: judgment of 25 June 1992, Series A No. 239
applicant fined for publication in a newspaper of two articles concerning police brutalities; violation of Article 10

Schwabe v. Austria: judgment of 28 August 1992, Series A No. 242-B
applicant’s conviction for defamation and for having reproached a political person for an offence for which he had already served his sentence; violation of Article 10

Herczegfalvy v. Austria: judgment of 24 September 1992, Series A No. 244
complaint concerning the violation of the right to respect for correspondence and the right to receive information during the detention and psychiatric treatment of the applicant; violation of Article 10

Open Door Counselling Ltd and Dublin Well Woman v. Ireland: judgment of 29 October 1992, Series A No. 246
injunction made by Irish Supreme Court in March 1988 restraining the applicants [counselling agencies] inter alia from providing pregnant women with information concerning abortion facilities abroad; violation of Article 10

Hadjianastassiou v. Greece: judgment of 16 December 1992, Series A No. 252
conviction of an officer by the military courts for having disclosed information of minor importance, but classified as secret; non-violation of Article 10

Colman v. the United Kingdom: judgment of 28 June 1993, Series A No. 258-D
restrictions on advertising by private medical practices imposed by the General Medical Council; struck off the list

Chorherr v. Austria: judgment of 25 August 1993, Series A No. 266-B
the arrest, detention and conviction of the applicant for disturbing the public order, further to his refusal to stop distributing leaflets and displaying posters at a military parade in Austria) non-violation of Article 10

Informationsverein Lentia and others v. Austria: judgment of 24 November 1993, Series A No. 276
impossibility of setting up and operating private radio or television stations because of the monopoly of the Austrian Broadcasting Corporation; violation of Article 10
Casado Coca v. Spain: judgment of 24 February 1994, Series A No. 285
disciplinary sanction imposed on Spanish lawyer for having advertised his professional services; non-violation of Article 10

Jacubowski v. Germany: judgment of 23 June 1994, Series A No. 291-A
prohibition imposed on journalist restraining him from disseminating letter containing adverse comments on a news agency in Germany; non-violation of Article 10

Otto-Preminger-Institut v. Austria: judgment of 20 September 1994, Series A No. 295-A
seizure and confiscation of a film considered by the Austrian courts to be blasphemous; non-violation of Article 10

Jersild v. Denmark: judgment of 23 September 1994, Series A No. 298
conviction of a television journalist for aiding and abetting the dissemination of racist statements; violation of Article 10

Vereinigung Demokratischer Soldaten Österreichs and Gubi v. Austria: judgment of 19 December 1994, Series A No. 302
prohibition on distributing a military newspaper in Austrian barracks; violation of Article 10

seizure and withdrawal from circulation of an issue of the applicant association’s magazine because of the publication of a confidential article on the activities of the Internal Security Service; violation of Article 10

Prager and Oberschlick v. Austria: judgment of 26 April 1995, Series A No. 313
conviction for defamation on the grounds of critical remarks made about several judges and confiscation of copies of the publication; non-violation of Article 10

Piermont v. France: judgment of 27 April 1995, Series A No. 314
expulsion from French Polynesia of a German member of the European Parliament and prohibition on returning following her participation in a demonstration, and prohibition of entry into New Caledonia; violation of Article 10

Tolstoy Miloslavsky v. the United Kingdom: judgment of 13 July 1995, Series A No. 316-B
applicant ordered to pay substantial damages for having libelled a school official by accusing him of past war crimes; violation of Article 10

dismissal of a teacher from the civil service on account of political activities in the German Communist Party; violation of Article 10

Goodwin v. the United Kingdom: judgment of 27 March 1996, Reports of Judgments and Decisions, 1996-II
disclosure order requiring the applicant, a journalist, to reveal his sources of information; violation of Article 10
conviction of a political leader for disturbing the peace by distributing, during an election campaign, printed matter referring to the Moslem population of western Thrace as “Turks”; failure to exhaust domestic remedies

refusal by the British Board of Film Classification to grant a classification certificate to a film which it considered to be blasphemous; non-violation of Article 10

order for two journalists to pay damages for libel in respect of several judges; violation of Article 10

refusal to authorise the applicant company to broadcast its programmes over a local cable network; struck off the list

Oberschlick (No. 2) v. Austria: judgment of 1 July 1997, Reports of Judgments and Decisions, 1997-IV
conviction for insulting a politician; violation of Article 10

Worm v. Austria: judgment of 29 August 1997, Reports of Judgments and Decisions, 1997-V
conviction of a journalist for wrongfully influencing the outcome of criminal proceedings; non-violation of Article 10

refusal to authorise the creation of a local radio station because of the monopoly which existed prior to amendments to the legislation; violation of Article 10

conviction of a former mayor for expressing support for terrorist acts in an interview with journalists; non-violation of Article 10

conviction of a conscript for insulting the army, following an insulting letter sent to his commanding officer; violation of Article 10

failure to provide local population with information about risk factor and how to proceed in event of an accident at nearby chemical factory; Article 10 inapplicable
prosecution following distribution of leaflets by abortion campaigner prior to general election; violation of Article 10

disciplinary penalty imposed by the Bar association on lawyer following criticisms of the judiciary made at a press conference, concerning the detention of one of his clients; non-violation of Article 10

conviction for participating in the preparation of a leaflet criticising the local authority policy concerning workers, particularly those of Kurdish origin; violation of Article 10

following publication of article, private individual prohibited from stating that consumption of food prepared in microwave ovens was danger to human health; violation of Article 10

restrictions on the involvement of senior local government officers in certain types of political activity; non-violation of Article 10

conviction for “public defence of war crimes or the crimes of collaboration” following appearance in a national daily newspaper of an advertisement presenting in a positive light certain acts of Philippe Pétain; violation of Article 10

arrest and detention of protesters for breach of the peace – detention after refusal to be bound over; non-violation of Article 10 in respect of the first and second applicants; violation of Article 10 in respect of the third, fourth and fifth applicants

conviction of a journalist who joined in an altercation between police officers and fruit sellers; non-violation of Article 10

conviction for unlawful possession of photocopies of Inland Revenue documents (income tax returns) following publication by the satirical weekly Canard enchaîné of details of the salary of the chairman of Peugeot motor cars; violation of Article 10
conviction, on the strength of an official report which had not been made public, of a newspaper and its chief editor to damages for defamation, following the publication of statements concerning alleged violations of seal hunting regulations; violation of Article 10

prohibition forbidding career members of the police to join political parties and engage in political activities; non-violation of Article 10

Arslan v. Turkey: judgment of 8 July 1999, unpublished
conviction for disseminating propaganda against the integrity of the State; violation of Article 10

Baskaya and Okçuoglu v. Turkey: judgment of 8 July 1999, Reports of Judgments and Decisions, 1999-IV
conviction for disseminating propaganda against the integrity of the State in a book published by the applicant and seizure of the book; violation of Article 10

Ceylan v. Turkey: judgment of 8 July 1999, Reports of Judgments and Decisions, 1999-IV
conviction of a member of a trade union for incitement to hatred following the publication of criticisms of State policy in south-east Turkey); violation of Article 10

Erdogdu and Ince v. Turkey: judgment of 8 July 1999, Reports of Judgments and Decisions, 1999-I
conviction for disseminating propaganda against the integrity of the State; violation of Article 10

Gerger v. Turkey: judgment of 8 July 1999, unpublished
conviction for disseminating propaganda against the integrity of the State; violation of Article 10

Karataş v. Turkey: judgment of 8 July 1999, Reports of Judgments and Decisions, 1999-IV
conviction for disseminating propaganda against the integrity of the State; violation of Article 10

Okçuoglu v. Turkey: judgment of 8 July 1999, unpublished
conviction for disseminating propaganda against the integrity of the State; violation of Article 10

Polat v. Turkey: judgment of 8 July 1999, unpublished
conviction for disseminating propaganda against the integrity of the State in a book published by the applicant, and confiscation of the book; violation of Article 10

Sürek (No. 1) v. Turkey: judgment of 8 July 1999, Reports of Judgments and Decisions, 1999-IV
conviction for disseminating propaganda against the integrity of the State; non-violation of Article 10
Sürek (No. 2) v. Turkey: judgment of 8 July 1999, unpublished
conviction for publishing in a periodical the names of officials responsible for combating terrorism; violation of Article 10

Sürek (No. 3) v. Turkey: judgment of 8 July 1999, unpublished
conviction to a fine and seizure of a publication challenging the integrity of the State; non-violation of Article 10

Sürek (No. 4) v. Turkey: judgment of 8 July 1999, unpublished
prosecution following a publication challenging the integrity of the State; violation of Article 10

Sürek and Özdemir v. Turkey: judgment of 8 July 1999, unpublished
conviction for disseminating propaganda against the integrity of the State and incitement to terrorism following publication of an interview of a member of the PKK; violation of Article 10

Öztürk v. Turkey: judgment of 28 September 1999, Reports of Judgments and Decisions, 1999-VI
confiscation of a publication and conviction of a publisher for incitement to hatred; violation of Article 10

Dalban v. Romania: judgment of 28 September 1999, Reports of Judgments and Decisions, 1999-VI
conviction for defamation following publication by a journalist of several articles accusing public figures of involvement in fraud; violation of Article 10

statement by the Prince of Liechtenstein that he would not appoint the applicant, then Administrative Court President, to any public office because of ideas he had expressed on constitutional matters; violation of Article 10

case concerning a binding-over order in respect of behaviour contra bonos mores; violation of Article 10

representatives of police trade union organisations successfully prosecuted for defamation following comments they made about certain publications reporting police brutality; violation of Article 10

ban on the publication of photographs of a person in connection with criminal proceedings against that person; violation of Article 10
dismissal of a television programme director for remarks considered offensive to certain managers of a Spanish public television channel; violation of Article 10

aggressions, search, arrest and various convictions concerning a newspaper and its staff; violation of Article 10

injunction on the applicant, a politician, not to repeat the expression “nazi journalism” which he had used in reference to a newspaper that had published an article about him; non-violation of Article 10

sentencing of a newspaper, its former editor and a journalist to damages for defamation following publication of a series of articles on the patients of a doctor specialising in cosmetic surgery; violation of Article 10

Erdogdu v. Turkey: judgment of 15 June 2000, unpublished
conviction of the editor of a periodical for disseminating propaganda against the indivisibility of the State; violation of Article 10

Constantinescu v. Romania: judgment of 27 June 2000, unpublished
conviction of the president of a teachers’ trade union for defamation of former union members; non-violation of Article 10

Sener v. Turkey: judgment of 18 July 2000, unpublished
conviction for publishing separatist propaganda in a weekly newspaper; violation of Article 10

Tele 1 Privatfernsehgesellschaft mbH v. Austria: judgment of 21 September 2000, unpublished
refusal to issue a licence to set up and operate a terrestrial private television transmitter; violation of Article 10 for the period from 1993 to 1995; non-violation of Article 10 for the period from 1995 to 1997

Lopes Gomes Da Silva v. Portugal: judgment of 28 September 2000, unpublished
conviction of a newspaper manager for defamation in the press; violation of Article 10

Du Roy and Malaurie v. France: judgment of 3 October 2000, unpublished
conviction of an editor and a journalist for publishing information about a criminal complaint together with a civil claim; violation of Article 10

Aksoy v. Turkey: judgment of 10 October 2000, unpublished
conviction for separatist propaganda; violation of Article 10
B. Decisions and reports of the European Commission and Court of Human Rights

Application No. 2690/65: Report of 3 October 1968, Televizier v. the Netherlands, Yearbook 11, p. 782
- challenge to national copyright law protecting information on forthcoming radio and television programmes; struck off the list

- challenging of monopoly; inadmissible

Application No. 4515/70: Decision of 12 July 1971, Sc. X and the Association of Z. v. the United Kingdom, Yearbook 14, p. 538
- refusal of the BBC to grant broadcasting time to a political party; inadmissible

- refusal to issue a licence to a commercial radio; inadmissible

- challenge to national copyright law protecting information on forthcoming radio and television programmes; Committee of Ministers Resolution DH (77) 1 of 17 February 1977; non-violation of Article 10

Application No. 6452/74: Decision of 12 March 1976, Sacchi v. Italy (Telebiella), D.R. 5, p. 43
- State monopoly on cable: question of the constitutionality of the law; inadmissible

Application No. 7805/77: Decision of 5 May 1979, X. and Church of Scientology v. Sweden, D.R. 16, p. 68
- prohibition of advertisements by a sect; inadmissible

Application No. 8266/78: Decision of 4 December 1978, X. v. the United Kingdom (Radio Caroline), D.R. 16, p. 190
- prosecution for advertising on behalf of a pirate broadcasting station; inadmissible

- prosecution for unauthorised private use of Citizen Band; inadmissible

- refusal to grant broadcasting time; inadmissible

- prohibition of advertisements; inadmissible
   temporary absence of legislation laying down the conditions for the granting of a licence: issue of the constitutionality of the legislation; inadmissible

Application No. 9720/82: Decision of 7 May 1984, Barroud v. France, unpublished
   alleged impossibility of obtaining a concession under the new licensing system; inadmissible

   refusal of authorisation to install a private aerial; inadmissible

   restrictions in French regulations concerning the advertising of medicines; inadmissible

Application No. 10405/83: Decision of 5 March 1986, X. and others v. Belgium (Radio Scorpio), unpublished
   prosecution for operation of a radio station without authorisation due to a three-year delay in the application of the anti-monopoly law; inadmissible

   installation on the roof of an antenna for an amateur radio station; right not guaranteed; inadmissible

   refusal to grant a local broadcasting concession to the applicant radio stations although they fulfilled the conditions laid down by the law; inadmissible

   ban on cable companies distributing programmes produced by the applicant; inadmissible

   restrictions on the reporting of criminal proceedings; inadmissible

   dismissal of a doctor on account of his statements regarding abortion; inadmissible

   refusal of the Swedish State radio to broadcast a radio programme produced by the applicant; inadmissible
publication in the press of a memorandum by an investigating judge mentioning the applicants' involvement in certain offences; inadmissible

restriction on the reception of certain local radio stations for subsequent retransmission by cable; inadmissible

prohibition on a cable network to transmit a radio programme; inadmissible

obligation of the applicant, a non-profit foundation of Dutch broadcasting organisations, to pay financial compensation for radio and television coverage of football matches in exchange for broadcasting permission; inadmissible

reprimand issued against the applicant, a lawyer, for prohibited advertising of his services; inadmissible

publication in the press of extracts from a book entitled *Spycatcher*; Committee of Ministers Resolution DH (92) 15 of 15 May 1992; non-violation of Article 10

Application No. 15404/89: Decision of 16 April 1991, Purcell and others v. Ireland, D.R. 70, p. 262
prohibition on broadcasting interviews with certain organisations, in particular a recognised political party; inadmissible

conviction of applicants for the repeated publishing, sale and rental of obscene videos; inadmissible

Application No. 16844/90: Decision of 13 October 1993, Nederlandse Omroepprogramma Stichting v. the Netherlands, unpublished
fines imposed for having broadcast prohibited indirect commercial messages in the context of informative television programmes; inadmissible

broadcast of radio programmes without authorisation; inadmissible

prohibition of a misleading slogan used by a dance school; inadmissible
refusal by authorities to issue a broadcasting licence to the applicant, based on legislation stating that no individual could be granted such a licence; inadmissible

applicant forced to remove an aerial installation from the roof of his home as it disfigured the appearance of the locality; inadmissible

Application No. 18033/91: Decision of 29 November 1993, Cable Music Europe Ltd v. the Netherlands, unpublished
prohibition on broadcasting company on transmitting its programmes via Dutch cable networks; inadmissible

refusal to allocate broadcasting frequencies to local TV stations; inadmissible

refusal to issue a broadcasting licence to non-profit making associations by the Community Broadcasting Commission in Sweden on account of their intention to broadcast commercials; inadmissible

Application No. 18714/91: Decision of 9 May 1994, Brind and others v. the United Kingdom, D.R. 77, p. 42
prohibition on broadcasting live interviews or spoken statements by persons expressing clear support for organisations linked with Sinn Fein; inadmissible

Application No. 18759/91: Decision of 9 May 1994, McLaughlin v. the United Kingdom, unpublised
prohibition on broadcasting live interviews or spoken statements by persons representing or expressing support for organisations linked with Sinn Fein; inadmissible

conviction for contempt of court, and fine for publishing Spycatcher extracts already prohibited by injunctions on the Observer and Guardian newspapers; inadmissible

conviction of a journalist for defamation and for publication of underground press; inadmissible

disciplinary sanction imposed on the applicant after the publication of criticisms of his colleagues; inadmissible
    fine imposed on a lawyer for making improper comments about the other party’s lawyer; inadmissible

    conviction of the owner of a magazine for defamation and violation of privacy following the publication of photographs of a well-known businessman engaging in sexual acts with several young women; inadmissible

    injunction under the Unfair Competition Act prohibiting the publication of a cartoon offensive to the daily newspaper Krone; struck off the list

    search and seizure of a magazine in which it had been claimed that the Holocaust did not take place; inadmissible

    prohibition on a broadcasting company from broadcasting its programmes on the Dutch cable network; inadmissible

    order requiring a specialist in alternative medicine to refrain from advertising in the form of a newspaper article; inadmissible

    disciplinary sanction imposed on a lawyer for issuing a press release criticising the conditions of detention of his client and the conduct of the proceedings; inadmissible

    injunction prohibiting an opponent of abortion, for a limited period, from approaching a clinic in front of which he had demonstrated and handed out leaflets; inadmissible

    refusal by the Swiss Radio and Television Broadcasting Company SSR to broadcast a programme on the applicant association; inadmissible

    conviction for incitement to disregard military laws; inadmissible

    refusal to grant a journalist accreditation with a court; inadmissible
conviction for the distribution of a magazine denying the existence of gas chambers
in extermination camps; inadmissible

Application No. 24699/94: Decision of 6 April 2000, VgT Verein gegen Tierfabriken
v. Switzerland
refusal of the competent authorities to broadcast a television advertisement pro-
posed by an association for the protection of animals; admissible

Kingdom, D.R. 82, p. 98
challenge by an independent candidate in the European elections of the criteria ap-
plied by the BBC for allotting broadcasting time during the election period; inadmis-
sible

Application No. 24914/94: Decision of 19 October 1999, A. Öztürk v. Turkey
seizure of three issues of a periodical for disseminating separatist propaganda or in-
citing hostility; admissible

Application No. 25060/94: Decision of 18 October 1995, J. Haider v. Austria, D.R. 83,
p. 66
alleged lack of objectivity of reports on a politician by the Austrian Broadcasting and
Television Institute; inadmissible

Application No. 25062/94: Decision of 18 October 1995, G. Honsik v. Austria, D.R. 83,
p. 77
conviction for denying in a publication the reality of the Holocaust; inadmissible

Application No. 25063/94: Decision of 6 September 1995, H. Trießlinger v. Germany,
unpublished
injunction prohibiting the applicant from repeating criticism of his former lawyer;
inadmissible

D.R. 82, p. 117
doubt cast in a publication that the Holocaust had really occurred and criticism of
Germany’s policy towards refugees; inadmissible

v. Turkey
conviction of a former MP for the DEP party – which was dissolved by the Constitu-
tional Court – for separatist propaganda; violation of Article 10; pending before the
Court

Applications Nos. 25144/94, 26149-54/95 and 27100-01/95: Decision of
30 May 2000, S. Sadak, N. Toguç, S. Yurttaş and others v. Turkey
removal from parliamentary office following dissolution of a political party); admissible
refusal to grant permission for the construction of an aerial installation for a radio ham; inadmissible

conviction for separatist propaganda in a speech; violation of Article 10; Committee of Ministers Resolution DH (99) 560 of 8 October 1999

5-day ban on broadcasting by a private television corporation following the broadcast of a programme criticising programme censorship at election time; struck off the list

ban on Greek-language newspapers and censorship of school books; violation of Article 10 in respect of the second claim; pending before the Court

judicial decision, in criminal proceedings, ordering the BBC to make available to the lawyers for the defence films made during a riot; inadmissible

refusal to grant a licence for the retransmission of foreign private television programmes, pending a decision by the regional public television body, which enjoyed a preferential right of limited duration; inadmissible

obligation imposed by a local authority to refrain, during a public meeting, from any statement contesting the persecution of the Jews by the Nazis; inadmissible

applicant company ordered to publish a judgment in its political magazine declaring an article it had published criticising national police handling of asylum issues defamatory; violation of Article 10, Committee of Ministers, Interim Decision DH (98) 378 of 12 November 1998

refusal to register two periodicals, thereby preventing their publication; violation of Article 10; pending before the Court

Application No. 26335/95: Decision of 27 June 1996, Vereniging Radio 100 and others v. the Netherlands, unpublished
search and seizure of broadcasting equipment following unauthorised broadcasting of radio programmes; inadmissible
conviction for denial, in a publication, of the existence of gas chambers in extermination camps; inadmissible

disciplinary sanction issued to a judge for comments made to a journalist in private; inadmissible

complaint by an applicant claiming not to have received objective information during the campaign preceding the referendum on accession to the European Union; inadmissible

Application No. 26958/95: Decision of 27 June 2000, S. Jerusalem v. Austria
order prohibiting a municipal council member from repeating terms such as “psychosects” in reference to two associations; admissible

Application No. 26982/95: Decision of 15 February 2000, M. Zana v. Turkey
conviction of a former mayor for propaganda against the territorial integrity of the State in statements before the European Parliament and at a press conference; admissible

Application No. 27307/95: Decision of 8 June 1999, M. Bayrak v. Turkey
conviction for propaganda against the integrity of the State following publication of works on Kurdish culture; admissible

refusal to grant a licence to run a television channel; inadmissible

Applications Nos. 27692/95, 28138/95 and 28498/95: Decision of 17 October 2000, B. Z. Karakoç and others v. Turkey
conviction of two union members and a journalist for separatist propaganda in a statement to the press; admissible

complaint by applicants claiming not to have received objective information during the campaign preceding the referendum on Finland's accession to the European Union; inadmissible

refusal by local television channels to transmit political broadcasts by the applicant; inadmissible

conviction for defamation following publication of details of a murder committed during the Second World War for which the offender, a film maker, has been granted amnesty; inadmissible
conviction of a journalist, temporarily in charge of a newspaper, for allowing the publication of anonymous articles; inadmissible

Application No. 28525/95: Decision of 12 September 2000, Unabhängige Initiative Informationsvielfalt v. Austria
injunction prohibiting an association from repeating the expression “racial agitation” in reference to an Austrian political party; admissible

dismissal of an employee for criticising his employer in tracts and in a letter to the press; inadmissible

exclusion order against the President of Sinn Fein preventing him from entering England at the invitation of certain MPs and journalists; inadmissible

conviction of a writer following statements criticising a minister; admissible

conviction of a lawyer for insulting a public prosecutor while acting as counsel in criminal proceedings; inadmissible

conviction for defamation of a private individual; inadmissible

conviction of a newspaper editorial staff for publishing an anonymous letter containing false allegations having led the government to withdraw an import permit; inadmissible

Application No. 29851/96: Decision of 19 September 2000, M. Zana v. Turkey, unpublished
conviction of a politician for separatist propaganda in a speech on the situation in south-east Turkey; inadmissible

conviction of a television channel for broadcasting pictures of wall paintings in a theatre without paying royalties to the artist’s assigns; inadmissible

refusal to authorise a radio ham to set up an aerial in a garden; inadmissible
conviction for publishing an article questioning the existence of gas chambers in the Struthof concentration camp; inadmissible

setting aside of a sentence requiring journalists to pay damages to two judges for comments published about them in the press; inadmissible

Application No. 32051/96: Decision of 4 May 2000, A. Jääskeläinen and others v. Finland, unpublished
conviction of the applicants for defamation following accusations against public officials; inadmissible

conviction for involvement in activities inspired by National Socialist ideology; inadmissible

conviction for defamation following the publication of an allegedly defamatory open letter in a daily newspaper; **admissible**

disciplinary sanction imposed on a lawyer for advertising his services; inadmissible

refusal to allow a company general access to court archives for the purpose of obtaining information about potential borrowers to sell to financial institutions; inadmissible

conviction of the applicants for disrupting a lawful whaling expedition; inadmissible

conviction of the applicant for insults against two foreigners; inadmissible

conviction of the applicant for insults and defamation after he compared an anti-discrimination organisation to the nazis; inadmissible

conviction of a newspaper owner for propaganda in favour of illegal terrorist organisations published in three articles; **admissible**
conviction for defamation following publication of an article in which the applicant listed the names of persons alleged to have taken part in a massacre when the Communist party came to power in 1944; inadmissible

refusal of authorisation to interview a former terrorist before the end of her trial; inadmissible

rejection of an application for a licence to operate a local television service; inadmissible

Application No. 35974/97: Decision of 14 September 1999, M.J. Pelling v. the United Kingdom
order prohibiting the applicant from disclosing information about pending judicial proceedings; admissible

Application No. 36337/97: Decision of 14 September 1999, A. Bayram v. the United Kingdom
order prohibiting the applicant from disclosing information about pending judicial proceedings; admissible

conviction of the applicant for publishing an article suggesting that the number of victims of nazi mass killings has been overestimated; inadmissible

Application No. 38218/97: Decision of 11 July 2000, T. Brook v. the United Kingdom, unpublished
refusal to grant a short-wave radio broadcasting licence; inadmissible

Application No. 38383/97: Decision of 18 January 2000, Amnesty International (United Kingdom) v. the United Kingdom, unpublished
refusal of authorisation to broadcast a radio advertisement concerning human rights violations in certain countries; struck off the list

conviction of a journalist for quoting excerpts from an article questioning the honesty of a body of civil servants; admissible

Application No. 39288/98: Decision of 18 January 2000, EKIN Association v. France
ban on the distribution of a book concerning the Basque struggle; admissible

Application No. 39511/98: Decision of 8 June 1999, M. McGuinness v. the United Kingdom, Reports of Judgments and Decisions, 1999-V
refusal to allow the applicant to sit in Parliament and enjoy certain privileges following his refusal to take an oath; inadmissible
  dismissal of a public prosecutor for criticising the Minister of the Interior and a political party; inadmissible

Application No. 40077/98: Decision of 19 October 2000, R. Marasli v. Turkey
  conviction of the applicant for separatist propaganda following the publication of his article in a weekly newspaper; admissible

  conviction of a journalist for insulting a public figure; admissible

  conviction of the applicant for denying the reality of the Holocaust; inadmissible

Application No. 44802/98: Decision of 7 November 2000, United Christian Broadcasters Ltd v. the United Kingdom
  refusal of the competent authorities to provide an application form for a radio broadcasting licence to a religious charity organisation; inadmissible

  sentencing of the applicant, leader of the PKK, to death for activities aimed at the secession of part of Turkish territory and for forming and leading a band of armed terrorists for that purpose; admissible

  his arrest prevented the applicant from giving a press conference; inadmissible
Index

Applications to the Commission and the Court presented chronologically.

02690/65, Televizier v. the Netherlands, 26, 76
03071/67, X. v. Sweden, 34, 76
04515/70, Sc. X and the Assoc. of Z v. the United Kingdom, 34, 38, 76
04750/71, M. v. the United Kingdom, 36, 76
05178/71, De Geillustreerde Pers v. the Netherlands, 26, 76
06452/74, Sacchi v. Italy (Telebiella), 30, 34, 76
07805/77, X. and Church of Scientology v. Sweden, 45, 76
08266/78, X. v. the United Kingdom (Radio Caroline), 34, 45, 76
08962/80, X. and Y. v. Belgium, 37, 76
09297/81, X. Association v. Sweden, 38, 76
09664/82, I. Liljenberg v. Sweden, 45, 76
09675/82, Freie Rundfunk AG i Gr v. Federal Republic of Germany, 35, 77
09720/82, Barroud v. France, 37, 77
10248/83, Aebi v. Switzerland, 38, 77
10267/83, Jean Alexandre and others v. France, 45, 77
10405/83, X. and others v. Belgium (Radio Scorpio), 35, 77
10462/83, B. v. Federal Republic of Germany, 38, 77
10746/84, Verein Alternatives Lokalradio Bern and Verein Radio Dreyeckland Basel v. Switzerland, 35, 77
10799/84, Radio 24 AG, S., W. and A. v. Switzerland, 35, 39, 77
11553/85 and 11658/85, G.M.T. Hodgson, D. Woolf productions Ltd and National Union of Journalists and Channel Four Television Co Ltd v. the United Kingdom, 42, 77
12242/86, Rommelfanger v. Federal Republic of Germany, 55, 77
12439/86, Sundberg v. Sweden, 38, 77
13251/87, Berns and Ewert v. Luxembourg, 26, 78
13252/87, Gemeinde Rothenthurm v. Switzerland, 35, 78
13253/87, R. Ebner v. Switzerland, 35, 78
13920/88, Nederlandse Omroepprogramma Stichting v. the Netherlands, 36, 78
14622/89, Hempfing v. Federal Republic of Germany, 45, 78
14644/89, Times Newspapers Ltd and A. Neil v. the United Kingdom, 26, 78
15404/89, B. Purcell and others v. Ireland, 26, 78
16564/90, W. and K. v. Switzerland, 55, 78
16844/90, Nederlandse Omroepprogramma Stichting v. the Netherlands, 37, 46, 78
16956/90, Dumarché v. France, 36, 78
17006/90, K. v. Federal Republic of Germany, 45, 78
17505/90, C. Nydahl v. Sweden, 36, 79
17713/91, Schindewolf v. Federal Republic of Germany, 38, 79
18033/91, Cable Music Europe Ltd. v. the Netherlands, 30, 37, 79
18353/91, M. N. v. Spain, 36, 79
18424/91, Röda Korsets Ungdomsförbund and others v. Sweden, 36, 46, 79
18714/91, Brind and others v. the United Kingdom, 37, 79
18759/91, McLaughlin v. the United Kingdom, 37, 79
18897/91, Times and A. Neil v. the United Kingdom, 27, 79
18902/91, H. N. v. Italy, 28, 64, 79
19363/92, G. Hirmann v. Austria, 63, 79
20571/92, G. F. v. Switzerland, 63, 80
20683/92, A. Neves v. Portugal, 28, 80
20915/92, Familiapress Zeitung v. Austria, 27, 80
21128/92, U. Walendy v. Germany, 27, 80
21472/93, X. S.A. v. the Netherlands, 30, 37, 80
21554/93, J. v. Germany, 44, 80
21861/93, P. Zühlmann v. Switzerland, 28, 80
22838/93, H. J. Van Den Dungen v. the Netherlands, 63, 80
23550/94, Association mondiale pour l’École instrument de paix v. Switzerland, 38, 80
23697/94, R. Saszmann v. Austria, 13, 80
23868/94 and 23869/94, A. Loersch and Association du courrier v. Switzerland, 42, 80
24398/94, F. Rebenhdl v. Austria, 27, 81
24699/94, VgT Verein gegen Tierfabriken v. Switzerland, 40, 81
24744/94, R. J. Huggett v. the United Kingdom, 38, 81
24914/94, A. Öztürk v. Turkey, 29, 81
25060/94, J. Haider v. Austria, 38, 81
25062/94, G. Honsik v. Austria, 27, 81
25063/94, H. Trieflinger v. Germany, 63, 81
25096/94, O.E.F.A. Remer v. Germany, 27, 81
25143/94 and 27098/95, S. Yurttaş v. Turkey, 57, 81
25144/94, 26149-54/95 and 27100-01/95, S. Sadak, N. Toguç, S. Yurttaş and others v. Turkey, 59, 81
25183/94, L. Schwartz v. Luxembourg, 38, 82
25658/94, S. Aslantaş v. Turkey, 29, 82
25685/94, M.B.I. A. S. v. Turkey, 39, 82
25781/94, Cyprus v. Turkey, 56, 82
25798/94, British Broadcasting Corporation v. the United Kingdom, 66, 82
25987/94, A. W. Hins and P. B. Hugenholtz v. the Netherlands, 39, 82
25992/94, Nationaldemokratische Partei Deutschlands (N.P.D.), Bezirksverband München-Oberbayern v. Germany, 27, 82
26113/95, Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft m.b.H. v. Austria, 28, 82
26229/95, J. Gaweda v. Poland, 29, 82
26335/95, Vereniging Radio 100 and others v. the Netherlands, 36, 82
26551/95, D.I. v. Germany, 27, 83
26601/95, H.-C. Leiningen-Westerburg v. Austria, 63, 83
26633/95, E. Bader v. Austria, 43, 83
26958/95, S. Jerusalem v. Austria, 65, 83
26982/95, M. Zana v. Turkey, 58, 83

90
27307/95, M. Bayrak v. Turkey, 57, 83
27388/95, N. Grauso v. Poland, 38, 83
27692/95, 28138/95 and 28498/95, B. Z. Karakoç and others v. Turkey, 30, 83
27881/95, E. Nurminen and others v. Finland, 43, 83
28079/95, L. De Angeli v. Italy, 38, 83
28202/95, B.A. Middelburg, S. van der Zee, Het Parool B.V. v. the Netherlands, 28, 64, 83
28236/95, F. Bocos Rodriguez v. Spain, 28, 84
28525/95, Unabhängige Initiative Informationsvielfalt v. Austria, 30, 84
28962/95, R. Predota v. Austria, 64, 84
28979/95 and 30343/96, G. Adams and T. Benn v. the United Kingdom, 37, 84
29032/95, L. Feldek v. Slovakia, 64, 84
29045/95, H. Mahler v. Germany, 64, 84
29364/95, D. P. v. Romania, 63, 84
29473/95, L. Grech and A. Montanaro v. Malta, 64, 84
29851/96, M. Zana v. Turkey, 59, 84
30262/96, Société nationale de programmes France 2 v. France, 37, 84
30401/96, J. Van Der Auwera v. Belgium, 38, 84
31159/96, P. Marais v. France, 27, 85
31477/96, J. R. Lopez-Fando Raynaud and E. Pardo Unanua v. Spain, 63, 85
32051/96, A. Jääskeläinen and others v. Finland, 64, 85
32307/96, H. J. Schimanek v. Austria, 27, 85
32686/96, V. Marônek v. Slovakia, 29, 85
32813/96, K. Lindner v. Germany, 46, 85
32849/96, Grupo Interpres S.A. v. Spain, 43, 85
33678/96, G. Drieman and others v. Norway, 59, 85
34313/96, E. Immler v. Germany, 64, 85
34328/96, Peree v. the Netherlands, 64, 85
34686/97, K. T. Sürek v. Turkey, 29, 85
35125/97, S. Panev v. Bulgaria, 28, 86
35402/97, B. E. Hogefeld v. Germany, 58, 86
35591/97, J. Lévêque v. France, 40, 86
35974/97, M. J. Pelling v. the United Kingdom, 66, 86
36337/97, A. Bayram v. the United Kingdom, 66, 86
36773/97, H. Nachtmann v. Austria, 27, 86
38218/97, T. Brook v. the United Kingdom, 41, 86
38383/97, Amnesty International (United Kingdom) v. the United Kingdom, 40, 86
38432/97, M. Thoma v. Luxembourg, 29, 86
39288/98, EKIN Association v. France, 57, 86
39511/98, M. McGuinness v. the United Kingdom, 57, 86
39822/98, H. Altın v. Turkey, 66, 87
40077/98, R. Marasli v. Turkey, 30, 87
41205/98, E. Tammer v. Estonia, 29, 87
41448/98, H. J. Witzsch v. Germany, 27, 87
44802/98, United Christian Broadcasters Ltd v. the United Kingdom, 41, 87
46221/99, A. Öcalan v. Turkey, 59, 87
49392/99, Ch. Debbasch v. France, 58, 87
Court judgments presented alphabetically.

Ahmed and others v. the United Kingdom, 51, 72
Ahmet Sadik v. Greece, 56, 71
Aksoy v. Turkey, 54, 75
Arslan v. Turkey, 52, 73
Autronic AG v. Switzerland, 9, 31, 68
Barfod v. Denmark, 11, 68
Barthold v. Federal Republic of Germany, 10, 67
Baskaya and Okçuoglu v. Turkey, 53, 73
Bergens Tidende and others v. Norway, 23, 75
Bladet Tromsø and Stensaa v. Norway, 18, 73
Bowman v. the United Kingdom, 60, 72
Casado Coca v. Spain, 44, 70
Castells v. Spain, 12, 50, 69
Ceylan v. Turkey, 19, 73
Chorherr v. Austria, 48, 69
Colman v. the United Kingdom, 55, 69
Constantinescu v. Romania, 63, 75
Dalban v. Romania, 21, 74
De Becker v. Belgium, 9, 10, 67
De Haes and Gijsels v. Belgium, 15, 71
Du Roy and Malaurie v. France, 25, 75
Engel and others v. the Netherlands, 10, 67
Erdogdu and Ince v. Turkey, 19, 73
Erdogdu v. Turkey, 24, 75
Fressoz and Roire v. France, 17, 72
Fuentes Bobo v. Spain, 61, 62, 75
Gaskin v. the United Kingdom, 41, 68
Gerger v. Turkey, 52, 73
Glasenapp and Kosiek v. Federal Republic of Germany, 49, 67
Goodwin v. the United Kingdom, 14, 15, 66, 70
Grigoriades v. Greece, 49, 50, 71
Groppera Radio AG and others v. Switzerland, 30, 31, 68
Guerra v. Italy, 41, 71
Hadjianastassiou v. Greece, 48, 69
Handyside v. the United Kingdom, 8, 46, 47, 67
Hashman and Harrup v. the United Kingdom, 8, 74
Herczegfalvy v. Austria, 8, 69
Hertel v. Switzerland, 17, 72
Incal v. Turkey, 50, 72
Informationsverein Lentia and others v. Austria, 8, 32, 33, 40, 69
Jaczubowski v. Germany, 44, 70
Janowski v. Poland, 61, 72
Jersild v. Denmark, 27, 59, 60, 70
Karataş v. Turkey, 52, 73
Leander v. Sweden, 41, 42, 67

92
Lehideux and Isorni v. France, 16, 72
Lingens v. Austria, 10, 67
Lopes Gomes Da Silva v. Portugal, 24, 25, 75
Markt Intern Verlag GmbH and Klaus Beermann v. Federal Republic of Germany, 43, 44, 68
Müller and others v. Switzerland, 47, 68
News Verlags GmbH and CoKG v. Austria, 21, 74
Nilsen and Johnsen v. Norway, 61, 74
Oberschlick (No. 1) v. Austria, 11, 12, 68
Oberschlick (No. 2) v. Austria, 15, 71
Observer and Guardian Newspapers Ltd v. the United Kingdom, 12, 68
Okçuoglu v. Turkey, 20, 73
Open Door Counselling Ltd and Dublin Well Woman v. Ireland, 47, 48, 69
Otto-Preminger-Institut v. Austria, 48, 70
Özgür Gündem v. Turkey, 22, 75
Öztürk v. Turkey, 20, 21, 74
Piermont v. France, 49, 70
Polat v. Turkey, 52, 73
Prager and Oberschlick v. Austria, 14, 70
Radio ABC v. Austria, 33, 71
Rekvényi v. Hungary, 51, 73
Schöpfer v. Switzerland, 65, 72
Schwabe v. Austria, 13, 69
Sener v. Turkey, 24, 75
Steel and others v. the United Kingdom, 50, 51, 72
Sunday Times (No. 1) v. the United Kingdom, 10, 67
Sunday Times (No. 2) v. the United Kingdom, 12, 69
Sürek (No. 1) v. Turkey, 19, 73
Sürek (No. 2) v. Turkey, 20, 74
Sürek (No. 3) v. Turkey, 19, 74
Sürek (No. 4) v. Turkey, 19, 74
Sürek and Özdemir v. Turkey, 19, 74
Tele 1 Privatfernsehgesellschaft mbH v. Austria, 33, 34, 75
Telesystem Tyrol Kabeltelevision v. Austria, 33, 71
Thorgeir Thorgeirson v. Iceland, 13, 69
Tolstoy Miloslavsky v. the United Kingdom, 14, 70
Vereinigung Demokratischer Soldaten Österreichs and Gubi v. Austria, 13, 70
Vereniging Weekblad Bluf! v. the Netherlands, 13, 14, 70
Vogt v. Federal Republic of Germany, 49, 66, 70
Wabl v. Austria, 62, 75
Weber v. Switzerland, 11, 68
Wille v. Liechtenstein, 53, 74
Wingrove v. the United Kingdom, 60, 71
Worm v. Austria, 9, 16, 71
Zana v. Turkey, 49, 50, 71
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