

Freedom of Expression

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ABSTRACT

Freedom of expression, protected by Art. 10 of the European Convention on Human Rights, is a cornerstone of democratic society. It guarantees the right to hold opinions, and to receive and share information without interference from public authorities. However, this right is not absolute; restrictions are permitted when they are prescribed by law, pursue a legitimate aim, and are necessary in a democratic society.

The European Court of Human Rights has developed extensive case law that balances freedom of expression with other rights and interests. In *Handyside v. United Kingdom*, the Court affirmed that freedom of expression protects not only agreeable ideas but also those that 'offend, shock, or disturb'. Yet, limits have been upheld in cases involving hate speech or incitement to violence, such as *Erbakan v. Turkey*. The margin of appreciation doctrine allows states some discretion, although it is narrower when political or public-interest speech is involved, as seen in *Lingens v. Austria*.

Overall, the jurisprudence of this court seeks to balance individual freedom with social responsibility. It continues to evolve in response to digital media, emphasizing that free expression remains vital to pluralism and democracy in Europe.

KEYWORDS

freedom of expression, restrictions, ECtHR

1. Introduction

Freedom of expression is a vital element of every modern society. Along with other human rights and freedoms, it forms the foundation of political life in democratic societies.

The right to freely express one's opinion is among the most widely recognized human rights across the world.

In a comparative review of the constitutions of all which was carried out in 1978, it was determined that out of 142 constitutions, 124 (or 87%) contained guarantee for freedom of expression. In the same research, only 66 constitutions (or 46.5) prohibited torture and inhuman treatment.¹

1 Janis, Kay and Bradley, 2000, p. 13.

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The origin of this right can be traced to the seventeenth century, when some documents, such as the Bill of Rights from 1688, guaranteed freedom of speech for that which is declared in the parliament. Variants of this right can be found in the earliest modern constitutions, including of a number of American states from the eighteenth century, Art. 11 of the French Declaration of the Rights of Man and of the Citizen, and the 1st Amendment of the US Constitution.

Freedom of expression, as a fundamental human right, is protected by the most significant international agreements in this field. It was accepted by the Universal Declaration of Human Rights, which was adopted by the United Nations (UN) General Assembly on 10 December 1948² (Art. 19), and subsequently guaranteed in the most important international treaties on the protection of human rights: Art. 19 of the International Covenant on Civil and Political Rights,³ Art. 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms,⁴ Art. 13 of the American Convention on Human Rights,⁵ Art. 9 Para. 2 of the African Charter on human and peoples' rights⁶ (adopted on 26 June 1981 within the Organization of African Unity) and Art. 11 of the Charter of Fundamental Rights of the European Union.⁷

This article discusses the meaning and significance of Art. 10 of the European Convention on Human Rights (hereinafter: European Convention, the Convention). The Art. then goes on to explain different types of freedom of expression using case law before the European Court of Human Rights (hereinafter: the Court). In the conclusion of the Art., special attention is given to restrictions on this right, particularly, its conditions.

2. The Notion of Freedom of Expression

Art. 10 of the Convention is composed of two parts: (1) A broad, positive guarantee (para. 1) that establishes a presumption in favour of expression. (2) A conditional limitation clause (para. 2) that allows restrictions under specific, narrowly construed conditions.

This two-tier structure is central to the Court's dogmatic reasoning: it creates a general right, then defines a legal test for permissible limitations.

In this regard, Art. 10 of the Convention states:

2 Universal Declaration of Human Rights, UN General Assembly, 10 December 1948.

3 International Covenant on Civil and Political Rights, UN General Assembly, 19 December 1966.

4 European Convention on the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 11 and 14, Council of Europe, 4 November 1950.

5 American Convention on Human Rights, Organization of American States, 22 November 1969.

6 African Charter on human and peoples' rights, Organization of African Unity, 26 June 1981.

7 Charter on Human Rights and Fundamental Freedoms, Official Journal of the European Union 2012/C 326/02, Art. 11.

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

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.’⁸

The justification for the special protection of expression can be considered in two ways. First, speech is protected as something of importance in modern society, because public debate represents a useful tool for achieving other social values, such as the development of personality. On the other hand, the possibility for an individual to freely express his views is seen as an inherent human value. Freedom of expression was considered the best way to reveal the truth, through the constant exchange of views and ideas. The Court observed that even military secrets are not excluded from the protection of Art. 10, and stressed that freedom of expression is not confined to specific types of information, ideas, or forms of expression, since it is at the foundation of every democratic society.⁹

The term ‘expression’ is itself not fully defined. It includes artistic acts such as painting in the case of *Müller and others v. Switzerland*,¹⁰ publications,¹¹ video materials,¹² publication of photographs,¹³ films,¹⁴ and other ways of transmitting ideas and information. It is also related to information of a commercial nature.¹⁵

Today, the biggest challenge related to this freedom is the exceptionally high use of internet services. Information can be reproduced and transmitted at incredible speeds.¹⁶ This technology represents a challenge for human rights on an international

8 European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 10.

9 Case 5493/72 *Handyside v. The United Kingdom*, Judgment of 7 December 1976, Separate Opinion of Judge Mosler.

10 Macovei, 2001, p. 43.

11 Case 38825/16 *Kotlyar v. Russia*, Judgment of 12 October 2022, paras. 41–42.

12 Case 63164/16 *Mandli and others v. Hungary*, Judgment of 12 October 2020, para. 72.

13 Case 39954/08 *Axel Springer AG v. Germany*, Judgment of 7 February 2012.

14 Case 59320/00 *Von Hannover v. Germany*, Judgment of 28 July 2005, para. 52.

15 Case 47881/11 *Prunea v. Romania*, Judgment of 8 April 2019, para. 36.

16 Jorgensen, 2000, p. 4.

level, especially on issues of jurisdiction and others such as incitement to racial and sexual hatred, and sexual exploitation of children.¹⁷

The Court held that the potential harm caused by online content and communication to the exercise and enjoyment of human rights and freedoms – especially the right to respect of private life – is undoubtedly greater than that posed by the press.¹⁸

Because of the inalienability of human rights, freedom of expression is linked with the freedom of thought (they are often mentioned together), freedom of assembly and association, freedom of the press, the right to privacy, and freedom from state interference in citizens' communication and private property.¹⁹ The state's duty to refrain from interfering with freedom of expression is especially emphasized when the information is of vital significance for the privacy or family life of citizens. It also intersects with minority rights and those concerning health and education. The link to freedom of speech and conscience is most evident in issues related to freedom of the press and religion.²⁰ In certain areas, it intersects with the right to participate in public life, to vote, and to stand for election. Although the freedom of expression is basically an individual right, there are examples wherein it is, by its nature, related to a group.

3. Types of Expression

3.1. Political Expression

One of the aims of Art. 10 is to guarantee unrestricted exchange of political ideas – a precondition of every democracy.²¹ The Court has repeatedly affirmed that freedom of political debate lies at the core of democratic society.²² In terms of the protection of Art. 10, there is no justification for the distinction between political discussions (e.g. on the suitability of politicians or public servants to carry out their function) and discussion of other public interest issues, such as information about the activities and possible irregularities in the work of the security services²³ (Spycatcher case); issues concerning the inherent health risks of taking medications, and questions of legal and moral responsibility for injuries caused²⁴ (the Sunday Times case); criticism of the police service²⁵ (the Thorgeirson); and published reviews regarding the lack of judicial impartiality²⁶ (Barfod case). A case that best illustrates this type of freedom of

17 Akdeniz, 2011, p. 19.

18 Case 64569/09 *Delfi AS v. Estonia*, Judgment of 16 June 2015, para. 133.

19 Council of Europe, 2019, p. 70.

20 Murdoch, 2012, p. 21.

21 Bychawska-Siniarska, 2017, p. 12.

22 Wildhaber, 2001, p. 20.

23 Case Comments, 1989, p. 423.

24 Case 6538/74 *The Sunday Times v. The United Kingdom*, Judgment of 26 April 1979.

25 Case 13778/88 *Thorgeir Thorgeirson v. Iceland*, Judgment of 25 June 1992.

26 Case 11508/85 *Barfod v. Denmark*, Judgment of 22 February 1989.

expression is that of *Lingens v. Austria*.²⁷ In this case, the prosecutor portrayed himself as a political journalist operating in a pluralistic society. He believed that, in this role, he was obliged to share his opinions on the judgments that Mr Krajski brought against Mr. Wiesenthal. He also maintained that a politician who is used to attacking his opponents must accept more criticism than others.

3.1.1. Case of *Lingens v. Austria*

The issue is whether restricting freedom of expression is justified in a democratic society. The term ‘necessary’ in Art. 10, Para. 2, implies the presence of a ‘social need’.²⁸ The contracting parties have some discretion in deciding whether such a need is present; however, the decision is under European supervision, including the legislation and decisions wherein the laws apply.

In its supervisory role, the Court is unable to observe the decisions of domestic courts separately; yet, it must consider them in the context of the case as a whole, including Arts. that are not in favour of the applicant, and the context in which they are written. The Court needs to evaluate whether the particular restriction on freedom of expression appropriately serves a legitimate purpose and if the justifications given by the Austrian courts are both relevant and sufficient.²⁹

Additionally, the Court must consider that freedom of expression, as guaranteed in Para. 1 of Art. 10 of the Convention is a basic principle of democratic society and a prerequisite for its development. According to Para. 2, it applies not only to information or ideas that are widely accepted, harmless, or deemed insignificant but also to those that offend, shock, or disturb. These requirements – pluralism, tolerance, and a broad range of opinions – are essential for the existence of a democratic society.³⁰

These principles hold special significance with regards to the press. While the press must not cross the boundaries established, among others, for the protection of people’s reputation, its duty is to disseminate information and ideas about political issues to the same extent as issues in other areas of public interest. The press is responsible for sharing information and ideas, and equally entitled to access them. In this context, the Court rejected the view expressed by the Vienna Appellate Court that the press’s role is limited to distributing information, leaving its interpretation solely to the readers.

There is no doubt that Art. 10 para. 2 ensures the protection of the reputation of other individuals and that this protection also applies to politicians, even when they are acting in an official or professional capacity. However, in these instances, the criteria for protection should be considered in light of the importance of open debate on political matters.

27 Case 9815/82 *Lingens v. Austria*, Judgment of 8 July 1986.

28 *Ibid.*, para. 39.

29 *Ibid.*, para. 40.

30 *Ibid.*, para. 41; Case 5493/72 *Handyside v. The United Kingdom*, para. 49.

In the *Lingens* case, the prosecutor was convicted for using certain expressions such as ‘lowest opportunism’, ‘immorality’, and ‘unworthy’ when he spoke about Mr. Krajski, who was the federal chancellor at that time. The Arts. featured in the Vienna magazine *Profil* focused on political matters of public interest to the Austrian state. The position of the Austrians, especially of the Chancellor, on National Socialism and the participation of former Nazis in managing the country was discussed. Although the Arts. were generally balanced in both content and tone, the use of the previously mentioned expressions could harm the reputation Mr. Krajski.³¹

The Vienna Court of Appeal fined Mr. Lingens, ordered the seizure of specific issues of *Profil*, and mandated the publication of the judgment. As the government pointed out, the disputed Arts. were already widely distributed at that time, so the punishment imposed on the author did not prevent him from expressing himself. Nevertheless, it contributed to a kind of censorship, which could discourage him from making such criticisms in the future. In the case of political debates, the judgement could discourage journalists from participating in public discourse on matters that affect community life.

Austrian courts considered that there were different ways to measure the behaviour of Mr. Krajski, and that, logically, it cannot be proven that only one interpretation is right. In the end, they found the applicant guilty of defamation.

In the understanding of the Court, a clear difference must be made between facts and personal opinions. The existence of facts can be proved, whereas a statement of value in one’s opinion cannot be considered evidence. In that regard, the Court stated that the facts on which Mr. Lingens based his opinion are indisputable.³²

According to Art. 3 para. 3 of the Criminal Code of Austria, a journalist in a similar case cannot escape condemnation unless he can prove that his allegations are true. When it comes to personal opinion, such a requirement is impossible to meet and, in itself, undermines freedom of expression – a core element of the right protected under Art. 10 of the Convention.

For these reasons, the restriction of Lingens’ freedom of expression does not appear to have been necessary to protect the reputation of others in a democratic society, nor was it consistent with the legitimate aim pursued. The Court, therefore, reached a unanimous decision that Art. 10 of the Convention had been violated. As this case illustrates, speech involving a political issue has a central role in the functioning of a democratic society.

It is difficult to defend arguments in favour of limiting such discussions. For example, in the case of *Bowman v. United Kingdom*,³³ the Court found a violation of Art. 10 when Part 75 of the Act on Representation of Citizens from 1983 was applied to the applicant who had printed and distributed 25,000 leaflets outlining the candidates’ positions in parliamentary constituencies on issues related to abortion. The law

31 Case 9815/82 *Lingens v. Austria*, para. 43.

32 *Ibid.*, para. 46.

33 Case 141/1996/760/961 *Bowman v. The United Kingdom*, Judgment of 19 February 1998.

prohibited expenses of more than 5 pounds, which anyone but the candidate would have, with the aim of helping the candidate's election. The ban did not apply to print or electronic media. The Court determined that the restriction was disproportionate to the legitimate aim of promoting equality among the candidates, since it represents an obstacle to the publication of information with the aim to influence voters.

Whether certain behaviours can be considered political expression is not always clear. In the case of *Thorgeir Thorgeirson v. Iceland*, the Court ruled that a defamation conviction stemming from a publication accusing unnamed police officers of brutality constituted a violation of Art. 10.³⁴

'The government argued that the strict rule in *Lingens* case, applicable to restrictions on discussions, is not applicable to other matters of public interest, specifically issues that did not include the direct or indirect participation of citizens in the decision-making process. The Court rejected this distinction.'³⁵

On the other hand, in the case of *Janowski v. Poland*, the Court held that a defamation claim against a public official, made in relation to the performance of their duties, did not violate Art. 10 of the Convention. The applicant in this dispute publicly labelled the police officers, who he believed were abusing their authority, as 'stupid' and 'fools'. As his statements were aimed at the policemen, and since only a few heard them, they were not part of a public debate on issues of general interest. The Court concurred that in certain situations, the scope for criticism may be broader regarding public officials performing their duties than for private individuals. However, it cannot be claimed that public servants willingly expose every word and action to public scrutiny to the same degree as politicians do. Therefore, they must be approached in the same way as politicians when it comes to questioning their actions. Moreover, public officials need to maintain public trust to effectively perform their duties, and it is thus essential to shield them from abusive and malicious verbal attacks while in their professional capacity.³⁶

In the case *Worm v. Austria*, the applicant authored an Art. on the tax evasion trial of a public figure, explicitly implying the accused's guilt. The author was found guilty of attempting to sway the outcome of a criminal trial and fined. The Court held that the judgment was in accordance with Art. 10 para. 2 of the Convention. It did not explicitly differentiate in relation to its decision in the *Sunday Times* case, but stressed that public figures, like all individuals, are entitled to the fair trial guarantees set out in Art. 6, which, in criminal proceedings, include the right to an independent

34 Case 13778/88 *Thorgeir Thorgeirson v. Iceland*, para. 66.

35 Janis, Kay and Bradley, 2000, p. 171.

36 Case 25716/94 *Janowski v. Poland*, Judgment of 21 January 1999, para. 33.

tribunal. It held that such accusations are in the line with the Convention, even when the state had not established influence on a specific procedure.³⁷

The central piece in the political discussion about freedom of expression is the emphasized need to protect the press from restrictions and censorship. The Court often emphasizes the importance of the press in realizing the values of Art. 10. It was noted in the *Lingens* case, and in the *Spycatcher* case, when the Court stated that:

‘Although the press must not exceed the limits established to protect the interests stipulated in Art. 10 of the European Convention, it is nevertheless its obligation to spread information and ideas on issues of public interest. If it were different the press would not be able to play its basic role as a public watchdog.’³⁸

Thus, the Court made clear that limits on criticism of politicians must be narrowly construed, as open debate on matters of public interest is essential to democracy. The *Lingens* case sets a lasting precedent that value judgments in political discourse are protected under Art. 10, even when they offend or shock.

3.1.2. *Sunday Times v. the United Kingdom*

The most famous case related to the freedom of the press is that of *Sunday Times v. the United Kingdom*.³⁹ The Court concluded that the ruling on the ban on publication of a newspaper represents restriction on newspapers’ freedom of expression under Art. 10 para. 1 of the Convention. The Court then referred to the government’s allegations that this interference is justified by the provisions of Art. 10 para. 2 and established that, despite the criminal offense of ‘contempt of court being provided only by English common law, the legal norms in question are nevertheless ‘prescribed by law’ according to the Convention, because individuals could know about the content of the rules applicable to their behaviour and of the consequences of their violation.⁴⁰ The Court further observed that the primary aim of criminalizing ‘contempt of court’ is to uphold the authority and impartiality of the judiciary, which aligns with one of the explicit restrictions on freedom of expression permitted by Art. 10 para. 2.⁴¹ Such a solution can be considered to be within the scope of the legal aims referred to in para. 2.

However, establishing that the solution was in accordance with the request to be ‘prescribed by law’, the Court considered its compliance with the standard of the ‘need in a democratic society’. It established that the United Kingdom government failed to prove that the sentence on the ban corresponded to the ‘necessary social need’, that it is ‘proportional to the achievement of the desired legal aim’, or that the

37 Case 83/1996/702/894 *Worm v. Austria*, Judgment of 29 August 1997, para. 50.

38 Case 13585/88 *Observer and Guardian v. The United Kingdom*, Judgment of 26 November 1991, para. 59.

39 Case 6538/74 *The Sunday Times v. The United Kingdom*.

40 *Ibid.*, paras. 62–63.

41 *Ibid.*, para. 54.

reasons stated before the internal courts were ‘appropriate and sufficient according to Art. 10 para. 2’.⁴²

The Court further mentioned the government’s argument that a balance had been maintained between the public interests of freedom of expression and the effective operation of the judiciary, expressed as follows:

‘it is generally recognized that courts cannot act in a vacuum space. Although the courts are the place where disputes are settled, this does not mean that it is not possible to have a previous discussion about these disputes elsewhere, either in the competent journals, the press in general or in front of a wide audience. Additionally, while the means of mass communication must not exceed the limits imposed by the interests of the judiciary, they are obliged to provide information and convey ideas about things that come before the court, as well as on all other matters of public interest. Not only that the means of mass communication have the task of introducing others with such information and ideas, but the citizens have the right to receive them.’⁴³

In its practice, the Court also emphasized that the freedom of the press depends not only on the right to issue a publication. Safeguarding journalistic sources is a fundamental requirement for press freedom – a principle already enshrined in the regulations and professional codes of conduct of many countries. Without these protections, information sources might be deterred from assisting the press in informing the public on public interest issues. Consequently, the press’s role in contemporary society and its ability to deliver accurate and reliable information could be seriously compromised. Given the importance of safeguarding journalistic sources for press freedom in a democratic society, and the potential negative impact that requiring disclosure may have on this freedom, such a measure cannot be considered compatible with Art. 10 of the Convention unless it is justified by a legitimate public interest.⁴⁴

The concept of ‘responsible journalism’ is a professional activity safeguarded under Art. 10 of the Convention. It is not limited to the substance of the information gathered or shared through journalistic methods. However, the protection granted by Art. 10 does not relieve journalists of their obligation to comply with general criminal law.⁴⁵ A journalist cannot assert absolute immunity from criminal responsibility solely because the offence was committed in the course of their journalistic duties.⁴⁶ In the case *Stoll v. Switzerland*, the Court found that the restriction of journalists’ freedom of expression was proportionate to the legitimate objectives pursued in cases involving the publication of a confidential diplomatic document.⁴⁷ Additionally, in the case

42 Ibid., para. 62.

43 Ibid., para. 65.

44 Case 2614/65 *Ringeisen v. Austria*, Judgment of 16 July 1971, para. 97.

45 Case 69698/01 *Stoll v. Switzerland*, Judgment of 10 December 2007, para. 102.

46 Case 11882/10 *Pentikainen v. Finland*, Judgment of 20 October 2015, para. 91.

47 Case 69698/01 *Stoll v. Switzerland*, para 128.

Pentikainen v. Finland, the interference was proportionate in relation to the refusal to comply with police orders to disperse after a demonstration turned violent.⁴⁸

3.2. *Economic Expression*

In addition to political expression, there is also the so-called economic or ‘commercial’ expression that is related to the economic life of each state. In countries with a market economy, every company that wants to start a business inevitably goes public with its activity to a detailed analysis of its competitors.⁴⁹ Its business strategy and the way in which it performs its obligations can be subject to criticism of consumers and specialized press. To fulfil its role, the press must have the freedom to publish Arts. that may interest the public and thereby promote transparency in business activities. To support this goal, society must guarantee the free flow of information and ideas about products and services available to consumers.⁵⁰

There are at least two reasons why expression related to trade or economic interests should enjoy less protection than expressions that includes political decision-making. First, as a matter of social policy, such an expression is of less danger to the central values of every democratic society. Second, there is an established practice of regulating economic issues, which includes certain restrictions on freedom of speech related to economic transactions.⁵¹

3.2.1. *Barthold v. Germany*

It is not always clear when a statement must be understood as economic and not political. In the case of *Barthold v. Germany*,⁵² the applicant, a veterinarian, was subject to disciplinary proceedings for his statements about the shortcomings of the night veterinary service in Hamburg, which were quoted in a newspaper Art. According to the German court, the applicant violated established standards against professional advertising. Since the restriction imposed on him prevented him from expressing his opinion on a subject of general interest, the Court has decided that Art. 10 applies in this case and found both economic and political aspects to the prosecutor’s statement, bearing in mind the basic content of this Art. and the nature of the question presented to the public. The ruling by the German courts would have the effect of discouraging members of liberal professions from contributing to discussions on topics that affect the life of the community, if there was even the slightest probability that such statements will be treated as having an advertising effect. A statement cannot be treated as an economic statement if its primary purpose is to inform the public on a topic for which there is legitimate public interest. The Court has allowed governments wider discretion in restricting economic speech than other forms of expression. This was confirmed in the *Markt Intern case*, where the Court rejected arguments in favour of

48 Case 11882/10 *Pentikainen v. Finland*, paras. 111–112.

49 Redish, 2017.

50 Krzemińska, 2005, p. 3.

51 Voerman-Tama, Grimes and Watson, 2023, pp. 261–262.

52 Case 8734/79 *Barthold v. Germany*, Judgment of 25 March 1985.

broader protection of economic expression.⁵³ However, the Court's judgment in the *Markt intern* case has been criticized as unacceptable, since the suppression of the dissemination of truthful information constitutes a clear violation of Art. 10 of the Convention.⁵⁴

3.2.2. *Hertel v. Switzerland*⁵⁵

Hans Ulrich Hertel, a Swiss engineer and researcher, conducted a study in the early 1990s comparing the biological effects of food cooked in microwave ovens with food prepared conventionally. His results suggested that microwaved food could cause changes in human blood indicative of potential health risks. Hertel's findings were published both in a scientific paper and in the environmental magazine *Journal Franz Weber*. Following publication, the Swiss Association of Manufacturers and Suppliers of Household Electrical Appliances (MHEA) sought an injunction under the Swiss Unfair Competition Act, claiming that his statements were misleading and harmful to their commercial reputation. In 1993, the Bern Commercial Court prohibited Hertel from making or repeating claims about the dangers of microwaved food. The Federal Court upheld this ruling in 1994.

Hertel lodged an application with the Court, arguing that the injunction violated his right to freedom of expression protected by Art. 10 of the Convention. He maintained that his research addressed a topic of clear public importance – health and food safety – and that silencing his conclusions was unjustified. The Swiss Government contended that the measure was lawful and necessary to protect the economic and professional interests of appliance manufacturers, as permitted under Art. 10 para. 2.

The Court accepted that the restriction was based on national law and pursued a legitimate aim – protecting the rights of others – but held that it was not necessary in a democratic society. The Court stressed that Hertel's statements concerned a matter of general public interest and that open scientific and public debate should not be suppressed, even if his conclusions were controversial or insufficiently supported. The Court concluded that Switzerland had violated Art. 10. Hertel's claim for pecuniary damages was rejected because no direct causal link was found between the restriction and his alleged financial losses.

The Hertel judgment reinforced that scientific expression, particularly on issues affecting public health, merits strong protection under Art. 10. In instances wherein statements may impact commercial interests, authorities must ensure that restrictions are proportionate and do not unduly suppress public debate.⁵⁶ Moreover, according to the Court's reasoning, a key factor in defining the scope of the appreciation margin granted to national authorities is whether the expression in question meaningfully

53 Case 10572/83 *Markt Intern Verlag GmbH and Klaus Beermann v. Germany*, Judgment of 20 November 1989.

54 Ellger, 2001, p. 174.

55 Case 59/1997/843/1049 *Hertel v. Switzerland*, Judgment of 25 August 1998.

56 Barendt, 2005, p. 214.

contributes to a public debate. The principles formulated in *Hertel v. Switzerland* can be broadly applied when distinguishing between commercial and non-commercial aspects of expression. The first relevant factor is the presence of an ongoing public discussion on the issue addressed by the impugned statement. The second is the statement's capacity to make a substantial contribution to that discussion. These same considerations were relied upon by the Court in the Barthold judgment.⁵⁷

3.3. Artistic Expression

In the judgment of the *Müller and Others v. Switzerland* case, the term 'expression' from Art. 10 included artistic expression 'which gives people the opportunity to participate in public exchange of cultural, political and social information and ideas of every kind'.⁵⁸

Art. 19 para. 2 of the International Covenant on Civil and Political Rights confirms that the concept of freedom of expression encompasses artistic expression,⁵⁹ which involves freedom of expression of information and ideas in the form of artistic work.⁶⁰ Moreover, the Special Rapporteur in the field of cultural rights submitted the report 'The right to freedom of artistic expression and creativity' to the Human Rights Council in 2013, which addresses a wide array of matters related to artistic activity and includes a call for special protection of artistic expression and freedom as a whole.⁶¹ Additionally, the 2018 Report on Cultural Rights connected the right to artistic expression with the rights to culture and creativity.⁶²

3.3.1. *Otto-Preminger-Institut v. Austria*

Freedom of expression can be linked to attempts by the state to ban what it considers offensive artistic or literary work.⁶³ In the cases of *Handyside* and *Markt Intern*, the European Court applied Art. 10 to speech which is not political in any particular sense. It explicitly affirmed that Art. 10's protection includes artistic expression involved in the public sharing of cultural, political, and social information and ideas. Through their creative work, the artist conveys not only a personal perspective on the world but also their outlook on the society they inhabit. This Art., in particular, does not say that the freedom of artistic expression falls within its scope, nor that it differs from other forms of expression. It contains the right to receive and communicate cultural, political and all other information and ideas.⁶⁴ Confirmation for this can be found in the second sentence of para. 1 of Art. 10, which refers to 'the work of television or cinema companies', the media whose activity extends to the field of art.

57 Dedja, 2018, p. 80.

58 Case 10737/84 *Müller and Others v. Switzerland*, Judgment of 24 May 1988, para. 31.

59 International Covenant on Civil and Political Rights, Art. 19 para. 2.

60 Polymenopoulou, 2016, p. 529.

61 Report on the right to freedom of artistic expression and creativity, 14 March 2013.

62 Bennoune, 2018.

63 Djajic and Lazic, 2021.

64 European Court of Human Rights, 2011, p. 5, para. 3.

This was proven in the case of *Otto-Preminger-Institut v. Austria*,⁶⁵ wherein the Court maintained the policy of minimalistic protection of artistic expression.

This case concerned the seizure and forfeiture of a film entitled *Council in Heaven* (*Das Liebeskonzil*), which was scheduled to be shown by the Otto-Preminger-Institut, a cultural association in Innsbruck, Austria. The film depicted God, Christ, and the Virgin Mary in a satirical and sexualized manner. Before its screening, the public prosecutor – acting on complaints from local Catholic groups – ordered the film’s seizure on the grounds that it insulted religious beliefs, in violation of Austrian criminal law. The Institute argued before the Court that this interference breached its right to freedom of expression under Art. 10 of the Convention.

The Court acknowledged that the seizure constituted an interference with Art. 10 rights, but held that it was prescribed by law, pursued a legitimate aim (the protection of the rights of others, namely the right of religious believers not to be gratuitously offended), and was necessary in a democratic society. The Court emphasized the state’s margin of appreciation in balancing freedom of expression and respect for religious feelings, particularly given the deeply Catholic context of Tyrol. By six votes to three, the Court found no violation of Art. 10.

This judgment is one of the leading cases on the limits of artistic freedom under Art. 10. It illustrates how the Court allows states a wide margin of appreciation in cases where freedom of expression conflicts with religious sensitivities. The decision has been debated for prioritizing the protection of religious feelings over unrestricted artistic and cultural expression.

3.3.2. *Karatas v. Turkey*⁶⁶

The applicant, Yavuz Karataş, was a Turkish poet and writer convicted under Turkey’s Anti-Terror Law for publishing a collection of poems titled ‘The Songs of Rebellion’ (*Isyan Türküleri*). The Turkish courts held that the poems incited hatred and promoted separatism by supporting the Kurdish cause and the Kurdistan Workers’ Party (PKK). Karataş was sentenced to imprisonment and fined. He appealed to the Court, claiming that his conviction violated his right to freedom of expression under Art. 10 of the Convention. The Turkish government argued that the restriction was necessary to protect national security and public order during a period of ongoing violence in southeastern Turkey.

The Court acknowledged that the interference was prescribed by law and pursued legitimate aims – namely, the protection of national security and territorial integrity. However, it found that the poems, though politically charged and critical of state policies, did not incite violence or hatred directly. The Court emphasized that freedom of artistic and political expression is vital in a democratic society and that the use of metaphor, symbolism, and strong emotion in poetry must be tolerated. Suppressing such expression solely for its critical tone would endanger democratic debate.

65 Case 13470/87 *Otto-Preminger-Institut v. Austria*, Judgment of 20 September 1994.

66 Case 23168/94 *Karatas v. Turkey*, Judgment of 8 July 1999.

Therefore, the Court held by twelve votes to six that there had been a violation of Art. 10.

The Karatas judgment reaffirmed that artistic expression – even when provocative or politically sensitive – deserves robust protection under Art. 10. The decision formed part of a broader line of Turkish ‘freedom of expression’ cases in the 1990s, wherein the Court sought to limit excessive criminal sanctions against writers, journalists, and artists.

3.4. Offensive Expression

In recent years, examples of offensive speech referring to certain ethnic groups have become more frequent.⁶⁷ European experiences with racist regimes in the twentieth century has engendered an increased sensitivity to dangers of this kind of expression.

3.4.1. *Jersild v. Denmark*

The Court has faced the question of whether an expression that is punishable according to the laws that limit racist speech is protected by Art. 10 of the Convention. The Court’s decisions have clarified that the laws regulating hate speech are in line with the Convention. In the case of *Jersild v. Denmark*,⁶⁸ the applicant made and presented a television show about a young racist gang in Copenhagen. Part of the show is an interview wherein his interlocutors talk about minorities in a rude and malicious way. The applicant was convicted under the Danish Criminal Code for making public statements that threaten, insult, or demean a group based on race, skin colour, national or ethnic origin, or belief, which constitutes defamation. The Court highlighted the significance of combating racial discrimination, but stated that the applicant’s behaviour in including such statements in his program cannot be considered as promotion of racism. The Court was particularly aware of the need to protect the press – namely, the content and form of presentation of information – in its judgments. Penalizing a journalist for helping disseminate statements made by others during an interview would significantly undermine the press’s role in facilitating public debate on important issues.⁶⁹

This judgment of the Court has not remained without comment. The question is whether one interest – freedom of the press – prevails over the other, specifically, the prevention of the spread of racism. In regulating this issue, international law was developed and some important standards in this field were adopted on a global level. It was brought about the International Convention on the Elimination of All Forms of Racial Discrimination in 1965,⁷⁰ which today has 182 State Parties. Denmark has ratified it on 9 December 1971. This Convention establishes certain obligations that

67 Council of Europe, 2011, p. 82.

68 Case 15890/89 *Jersild v. Denmark*, Judgment of 23 September 1994.

69 Rytter and Wind, 2011, p. 482.

70 International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966.

each State Party must fulfil. In Art. 1, they commit to refraining from any acts of racial discrimination against individuals, groups, or institutions, and to ensuring that all public authorities and institutions at national and local levels comply with this obligation. Additionally, the state must not incite, defend or support racial discrimination conducted by any person or organization. Art. 4 of the Convention requires states to denounce and penalize any propaganda rooted in ideas or theories of racial superiority or hatred, and to prohibit organizations that advocate and incite racial discrimination.⁷¹

While this Convention does not specifically mandate the punishment of journalists accountable for such television programs, it nevertheless supports the position that the media is obliged to take a clear stance in the area of racial discrimination⁷² and spreading racial hatred.⁷³ In this case, the Court did not respect these rules, and it is obliged to consider all relevant international agreements when interpreting the European Convention. Safeguarding racial minorities is equally important as the right to disseminate information. Moreover, the rights of persons whose dignity has been violated must be protected, even if this means limiting freedom of expression.

3.4.2. *Savva Terentyev v. Russia*⁷⁴

The applicant, Savva Terentyev, a Russian musician and blogger, was convicted of inciting hatred or enmity under Art. 282 of the Russian Criminal Code for a comment he posted on a social media blog in 2007. In his post, Terentyev harshly criticized police officers, describing them using highly offensive and metaphorical language and suggesting that ‘bad policemen’ should be publicly punished. Russian courts found him guilty, ruling that his post incited hatred toward a social group (police officers) and sentenced him to a suspended prison term. Terentyev complained to the Court, arguing that his conviction violated his right to freedom of expression under Art. 10 of the Convention.

The Court held that Russia had violated Art. 10. The Court recognized that Terentyev’s post was provocative and contained strong language, but emphasized that it was a form of political and social criticism rather than a call for violence or hatred. The Court noted that the statement was published in a personal blog with limited reach and was part of a broader debate on police misconduct. The domestic courts had failed to properly balance Terentyev’s right to free expression against the aim of protecting public order.

The Savva Terentyev case reinforces the protection of online expression and political satire under Art. 10. It highlights that even harsh or exaggerated criticism of public officials, particularly in social media contexts, must be tolerated in a democratic society unless it clearly promotes violence or hatred.

71 Todorovic, 2000.

72 Case 8348/78 and 8406/78 *Glimmerveen and Hagenbeek v. the Netherlands*, Commission decision on the admissibility of 11 October 1979.

73 Case 65831/01 *Garauđy v. France*, Decision on the admissibility of 24 June 2003.

74 Case 10692/09 *Savva Terentyev v. Russia*, Judgment of 28 August 2018.

4. Restrictions of Freedom of Expression

Restrictions on freedom of expression were introduced by some international treaties. For example, the Convention on the Use of Radio for the Purpose of Peace⁷⁵ prohibited radio broadcasts that threaten internal order or the safety of other states. Those broadcasts that contain propaganda in support of war or present false information endangering international cooperation are also banned. This issue is also regulated by the Convention on the International Right of Correction,⁷⁶ from 1953. If information is presented on the territory of one State Party, which would harm the reputation of another state or threatens existing relations with that state, the injured state has the right to present its version of the facts by the same means of information. It must not contain comments or views, but only facts and must not be longer than what is necessary to correct the stated false information. A copy of the response will also be delivered to the correspondents and news agencies that broadcasted the false news. They will announce the new information to the public as soon as possible.

Every restriction of human rights must be proportionate to the interests it serves. In the case of *Müller and others v. Switzerland*,⁷⁷ the issue of the protection of morals was also raised. The applicants claimed that the Swiss government violated Art. 10 by confiscating several sexually provocative pictures and fined artists for publishing lascivious material. The Court concluded that these measures were justified under the second Para., noting that states have a broad margin of appreciation in deciding what is necessary to protect morals.⁷⁸

Freedom of expression holds special significance for political parties and their active members. Any interference with the freedom of expression of politicians, particularly those belonging to opposition parties, demands the Court's most rigorous examination. The boundaries of acceptable criticism are broader when directed at the Government than when aimed at a private individual or even a politician. This was confirmed in a number of cases regarding Turkey.⁷⁹ Political ideas that question the current system and promote change through peaceful methods must be given a fair chance of expression.⁸⁰

Not every interference with the human rights protected by Art. 10 will be considered a violation.⁸¹ However, if it is established that the aim could have been achieved

75 Convention on the Use of Radio for the Purpose of Peace, Geneva, 1936.

76 Convention on the International Right of Correction, Geneva, 1953.

77 Case 10737/84 *Müller and Others v. Switzerland*.

78 *Ibid.*, para. 43.

79 Case 16853/05 *Faruk Temel v. Turkey*, Judgment of 1 May 2011, para. 55; Case 41/1997/825/1031 *Incal v. Turkey*, Judgment of 9 June 1998, para. 54; Case 50997/99 *Han v. Turkey*, Judgment of 13 December 2005, para. 29; Case 21163/11 *Mansur Yalcin v. Turkey*, Judgment of 16 December 2005, para. 43.

80 Case 20641/05 *Egitim ve Bilim Emekcileri Sendikasi v. Turkey*, Judgment of 25 December 2012, para. 70.

81 Schabas, 2016, p. 444.

by a lesser measure and was not necessary, the Member State will be deemed to have violated this Art. of the European Convention.⁸² For there to be a violation or a restriction, certain conditions must be met,⁸³ which are set out below. Nonetheless, Art. 10 para. 2 of the Convention allows very limited restrictions on political speech or debate⁸⁴ or discussions concerning matters of public interest.⁸⁵

The Court applies a three-step test to assess whether a restriction is justified under Art. 10 para. 2 of the Convention: (1) Prescribed by law: the restriction must have a legal basis that is accessible and foreseeable. (2) Legitimate aim: the restriction must pursue one of the legitimate aims enumerated in Art. 10 para. 2. (3) Necessary in a democratic society: the restriction must correspond to a pressing social need and be proportionate to the legitimate aim pursued.

4.1. Prescribed by Law

As per the jurisprudence of the Court, any interference by a public authority with an individual's rights that are safeguarded by Art. 10 must be carried out in accordance with the law.⁸⁶ This expression is not limited to the coherence of the interference, but also considers the quality of the law or regulation.⁸⁷ Quality is a matter of accessibility to citizens, precision of formulation and foreseeability of consequences.⁸⁸ In other words, a citizen should be aware that a certain rule is being applied and the rule should be expressed clearly enough to allow citizens to conform their conduct accordingly.⁸⁹ The Court considers that a regulation should provide the basic standard of legal safeguards against arbitrary and unjustified interference by public authorities with the rights guaranteed by Art. 10.⁹⁰ On the other hand, the Court is of the opinion that it is impossible to achieve absolute certainty, considering the fact that many laws contain vague provisions that are subject to interpretation in practice.⁹¹

When a rule is enforced for the first time in a case, the claimant cannot claim unpredictability of the law as a defence.⁹² Although the Convention does not set precise standards for how widely a rule must be publicized, it is available to all through its publication in the national official gazette.⁹³

82 Greer, 2007, p. 259.

83 Baširević, 2017, p. 307.

84 Case 71343/01 *Brasilier v. France*, Judgment of 11 July 2006, para. 41.

85 Case 26682/95 *Surek v. Turkey no. 1*, Judgment of 8 July 1999, para. 61.

86 Case 47621/13 *Vavrička and others v. The Czech Republic*, Judgment of 8 April 2021, para. 266; Case 24173/18 *Klaus Müller v. Germany*, Judgment of 19 February 2021, para. 48.

87 Case 58243/00 *Liberty and others v. The United Kingdom*, Judgment of 1 July 2008, para. 59.

88 Case 30194/09 *Shimovolos v. Russia*, Judgment of 21 June 2011, para. 67; Case 20652/92 *Djavit An v. Turkey*, Judgment of 9 July 2003, para. 65.

89 Case 28341/95 *Rotaru v. Romania*, Judgment of 4 May 2000, para. 52.

90 Case 24973/15 *Cangy v. Turkey*, Judgment of 29 April 2019, para. 42.

91 Case 12323/11 *Michaud v. France*, Judgment of 6 March 2013, Para. 96.

92 Case 931/13 *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland*, Judgment of 27 June 2017, para. 131.

93 Case 28470/12 *NIT S.R.L. v. the Republic of Moldova*, Judgment of 5 April 2022, para. 163.

When determining whether legal grounds for a restriction exists, the Court considers the way in which the national courts interpret and enforce the regulation.⁹⁴ Regulation includes not only national laws but also ‘rules of professional conduct, principles of customary law, European Union regulations and international bilateral and multilateral treaties’.⁹⁵ This means that both written and unwritten regulations are considered, with the Court then relying on the interpretation given by the national authorities.⁹⁶

4.2. Legitimate Aim

The government must demonstrate that the interference in the particular case was aimed at achieving a legitimate objective,⁹⁷ and that the national authorities have established a legitimate aim.⁹⁸ This is reinforced by the Court’s practice of assessing the presence of a legitimate aim as defined in Arts. 8 to 11 of the Convention.⁹⁹

Although states can only rely on the aims set out in para. 2,¹⁰⁰ they are formulated in broad terms and allow states a degree of discretion.¹⁰¹ Accordingly, the Court has determined in numerous cases that the State acted in line with the objectives set out in Art. 8, and the requirement of legitimacy has been considered of little importance in determining whether the State violated this Art.¹⁰²

At this stage, the Court may determine that an interference failed to further the legitimate aim invoked,¹⁰³ or it may decide to uphold just one of the legitimate aims cited by the State, while the others are rejected.¹⁰⁴ The struggle against terrorism is frequently mentioned as the primary context in relation to limitations of this right. National legal provisions addressing these legitimate aims are diverse and typically found in criminal codes, anti-terrorism laws, and occasionally, in national Constitutions.

In the case *Dareskizb Ltd. v. Armenia*, the Court ruled on the justification of the restriction under Art. 10, stating that banning newspapers from publishing Arts. critical of the government during a state of emergency was not a justified limitation. Despite pursuing a legitimate aim, such a restriction was unnecessary in a democratic society and went against the core purpose of Art. 10.¹⁰⁵

94 Case 32555/96 *Roche v. The United Kingdom*, Judgment of 19 October 2005, para. 157.

95 Roagna, 2012, p. 38.

96 Case 38224/03 *Sanoma Uitgevers B.V. v. the Netherlands*, Judgment of 14 September 2010, para. 82.

97 Case 1122/12 *P.T. v. The Republic of Moldova*, Judgment of 26 August 2020, para. 29.

98 Case 10271/12 *Kilin v. Russia*, Judgment of 11 August 2021, para. 61.

99 Case 43835/11 *S.A.S. v. France*, Judgment of 1 July 2014, para. 114.

100 Mowbray, 2012, p. 591.

101 Stevandić, 2019, p. 189.

102 Case 9248/81 *Leander v. Sweden*, Judgment of 26 March 1987, para. 50.

103 Case 67667/09 *Bayev and others v. Russia*, Judgment of 13 November 2017, paras. 64 and 83.

104 Case 29369/10 *Morice v. France*, Judgment of 23 April 2015, para. 170; Dzehtsiarou, Garde, 2022, p. 254.

105 Case 61737/08 *Dareskizb LTD v. Armenia*, Judgment of 08 October 2021, para. 78.

4.3. *Necessity in a Democratic Society*

To decide if a specific rights violation satisfies this criterion, the Court must weigh the interests of the Member State against those of the applicant.¹⁰⁶ In each case, the Court must determine whether an equitable balance has been achieved between the individual's fundamental right to freedom of expression and the legitimate interest of a democratic society to defend itself against terrorist activities.¹⁰⁷

It has been held that 'the only form of necessity which can justify an interference with a right is one which can be shown to arise in a democratic society'.¹⁰⁸ The term 'necessity' implies the existence of a 'pressing social need' for the interference in question.¹⁰⁹ It is up to the States to evaluate whether a pressing social need exists in any given case¹¹⁰; however, the Court retains the authority to review their decision.¹¹¹ It is also necessary for the interference to be 'proportionate to the legitimate aim pursued' and for reasons justifying the interference to be 'relevant and sufficient',¹¹² as confirmed in the cases *Barthold v. Germany*¹¹³ and *Lingens v. Austria*.¹¹⁴ The extent of the margin of appreciation granted to the States varies according to the nature of the matter and the significance of the interests involved in each case.¹¹⁵ However, owing to the absence of a European-wide consensus on certain sensitive moral and ethical questions, States are afforded a broad margin of appreciation in addressing such matters.¹¹⁶

In addition, when examining compliance with Art. 10, the Court must assess whether the national authorities acted in a reasonable, thorough manner, in good faith, and whether the interference pursued a legitimate aim in a proportionate way, supported by adequate and pertinent justifications. The Court further evaluates whether the respondent State took into consideration the principles laid down in Art. 10 and whether its conclusions were based on a proper analysis of the relevant facts.¹¹⁷

In the judgment in *Olsson v. Sweden*,¹¹⁸ the Court clarified what is meant by the term 'necessary in a democratic society'. As established in the Court's case-law, the notion of necessity implies that any restriction of human rights must address a pressing social

106 Case 23890/02 *Phinikaridou v. Cyprus*, Judgment of 20 December 2007, para. 47.

107 Case 69/1996/688/880 *Zana v. Turkey*, Judgment of 25 November 1997, para. 55; Case 23168/94 *Karatas v. Turkey*, Judgment of 8 July 1999, para. 51.

108 Case 19392/92 *United Communist Party of Turkey and others v. Turkey*, Judgment of 30 January 1998, para. 45.

109 Case 10730/84 *Berrehab v. The Netherlands*, Judgment of 21 June 1988, para. 28.

110 Case 20071/07 *Piechowicz v. Poland*, Judgment of 17 July 2012, para. 212.

111 Case 7525/76 *Dudgeon v. The United Kingdom*, Judgment of 22 October 1981, para. 51.

112 Case 22009/93 *Z. v. Finland*, Judgment of 25 February 1997, para. 94.

113 Case 8734/79 *Barthold v. Germany*, para. 55.

114 Case 9815/82 *Lingens v. Austria*, para. 40.

115 Case 37283/13 *Strand Lobben and others v. Norway*, Judgment of 10 September 2019, para. 211.

116 Case 25358/12 *Paradiso and Campanelli v. Italy*, Judgment of 24 January 2017, para. 184.

117 Case 8606/13 *Association de solidarité avec les témoins de Jéhovah and Others v. Turkey*, Judgment of 17 October 2016, para. 98.

118 Case 10465/83 *Olsson v. Sweden*, Judgment of 24 March 1988.

need and, importantly, be proportionate to the legitimate aim pursued. Countries that are parties to the Convention enjoy some flexibility in assessing whether such needs exist; however, it happens under European supervision, which also includes legal regulations and relevant decisions, even those made by an independent court. The Court has the authority to make the final determination on whether a restriction aligns with the right to freedom of expression as guaranteed by Art. 10. In exercising its supervisory role, the Court does not substitute itself for the national courts, but instead assesses whether the national decisions comply with the requirements of Art. 10.

An example of the limitations can be the case of *Handyside vs. United Kingdom*.¹¹⁹ The Court considered whether it is contrary to Art. 10 of the Convention to convict a person who published a handbook for school children with advice on sexual and other issues. Although the Court acknowledged that the State had the discretion to invoke the protection of morals under para. 2 and to prevent the publication of the textbook, it nevertheless emphasized the importance of freedom of expression in a democratic society:

‘Freedom of expression is one of the necessary foundations of such a society, one of the fundamental preconditions for our progress and for the development of every human being. It includes not only information or ideas that are well received or considered as harmless or unimportant, but also those who offend, stress or disturb the state or some part of the population. These are the orders of pluralism, tolerance and broadmindedness, without which there is no democratic society.’¹²⁰

At the heart of the Court’s judgment lies the concept of the ‘margin of appreciation’, which serves to assess whether the interference with protected rights is necessary in a democratic society for the pursuit of certain legitimate interests. The possibility of such justification of interference with human rights is also envisaged for some other rights recognized by the Convention (Arts. 8, 9, 11). The manner in which the Court determines the presence or absence of such ‘necessity’ will have an important impact on determining the necessary limits of protection. What is required to accomplish the stated objectives, even within democratic societies, can vary among countries. Additionally, the assessment of necessity by some governments differs from that of an international court, which is, of course, less familiar with the circumstances in the given country. This can lead to a situation wherein an international court automatically approves any interference by the state in the guaranteed rights.

119 Case 5493/72 *Handyside v. The United Kingdom*.

120 *Ibid.*, para. 49.

5. Conclusion

This paper explores freedom of expression as outlined in Art. 10 of the Convention, focusing on its interpretation by the Court. The Court's case law plays a crucial role in shaping the understanding of all rights under the Convention, including freedom of expression.

Over time, the Court has established what is meant by expression, standards of freedom of the press (in the cases of *Sunday Times* and *Lingens*) and the transmission of information. Specifically, that it can manifest in several forms, as political, economic and artistic expression. Political expression is the 'freest', in the sense that politicians and public officials are more exposed to the public eye and media criticism than ordinary citizens.

Freedom of expression is not unlimited. It may be limited under the conditions set out in para. 2 of Art. 10 of the Convention. Such limitations must be necessary in a democratic society, prescribed by law – ensuring that citizens understand the possible limits – and aimed at achieving a legitimate goal, such as protecting morals, public safety, or the rights of others. State authorities have a broad margin of appreciation in deciding whether the proposed restrictions meet these criteria. Nevertheless, the ultimate authority to determine the permissibility of these restrictions rests with the Court.

The Court's case-law on the justification of restrictions of protected rights by provisions such as para. 2 of Art. 10 shows that the strictness with which such justification is sought depends on the specific circumstances of the case. The field of discretion is difficult to determine in advance, and varies according to the principles that the Court considers to be appropriate in that case. However, the field is the widest when the Court considers whether the derogations of some rights was at a time of threats to public order, and narrowest when discussing the alleged violation of the personal rights of individuals. Notably, the Court addressed two distinct objectives from Art. 10 para. 2, as valid grounds for limiting freedom of expression: the protection of morals and the preservation of the authority and impartiality of the judiciary.

In conclusion, while the Court remains a vital guardian of freedom of expression in Europe, its jurisprudence must continue to evolve alongside technological and societal change. States should not only respect but actively integrate the Court's case law into their domestic legislation, ensuring greater harmony between national practice and European human rights standards. A stronger and more direct influence of Court jurisprudence on national law is especially important in addressing new forms of expression emerging in the digital environment.

The rapid development of online communication, artificial intelligence, and large language models presents both opportunities and risks. While freedom of expression must be preserved as a cornerstone of democracy, unchecked disinformation and manipulative content generated through modern technologies pose significant threats to truth, public safety, and informed discourse. Therefore, the Court's approach

should evolve to recognize that certain categories of online expression – particularly deliberate disinformation spread by hostile actors – warrant stricter scrutiny. This would not amount to unjustified restriction but rather to a context-sensitive balancing that protects the public good and supports a healthier exchange of knowledge.

Systematic content analysis of the Court's decisions could illuminate how the concepts of freedom of expression and national security interact within the Court's language and logic. Such research would contribute to a deeper understanding of how human rights law can remain responsive, principled, and forward-looking in an era of digital transformation.

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