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This Factsheet does not bind the Court and is not exhaustive

New technologies

Electronic data

S. and Marper v. the United Kingdom

4 December 2008 (Grand Chamber)

This case concerned the indefinite retention in a database of the applicants' fingerprints, cell samples and DNA profiles¹ after criminal proceedings against them had been terminated by an acquittal in one case and discontinued in the other case.

The European Court of Human Rights held that there had been a **violation of Article 8** (right to respect for private life) of the [European Convention on Human Rights](#). It considered in particular that the use of modern scientific techniques in the criminal-justice system could not be allowed at any cost and without carefully balancing the potential benefits of the extensive use of such techniques against important private-life interests. Any State claiming a pioneer role in the development of new technologies bore special responsibility for "striking the right balance". The Court concluded that the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences, as applied in this particular case, failed to strike a fair balance between the competing public and private interests.

B.B. v. France (application no. 5335/06), Gardel v. France and M.B. v. France (no. 22115/06)

17 December 2009

The three applicants – convicted of rape of 15 year-old minors by a person in a position of authority – complained, in particular, about their inclusion in the national Sex Offender Database.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention. It took the view that the length of the data conservation – 30 years maximum – was not disproportionate in relation to the aim pursued – prevention of crime – by the retention of the information. Moreover, the consultation of such data by the court, police and administrative authorities, was subject to a duty of confidentiality and was restricted to precisely determined circumstances.

Shimovolos v. Russia

21 June 2011

This case concerned the registration of a human rights activist in the so-called "surveillance database", which collected information about his movements, by train or air, within Russia, and his arrest.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It observed that the creation and maintenance of the database and the procedure for its operation were governed by a ministerial order which had never been published or otherwise made accessible to the public. Consequently, the Court found that the domestic law did not indicate with sufficient clarity the scope and manner of exercise of the discretion conferred on the domestic authorities to collect and

¹. DNA profiles are digitised information which is stored electronically on the National DNA Database together with details of the person to whom it relates.

store information on individuals' private lives in the database. In particular, it did not set out in a form accessible to the public any indication of the minimum safeguards against abuse. The Court also held that there had been a **violation of Article 5** (right to liberty and security) of the Convention.

Mandil v. France, Barreau and Others v. France and Deceuninck v. France

13 November 2011 (decisions on the admissibility)

The applicants were "Faucheurs volontaires" (Volunteer Reapers) who had participated in digging up experimental crops of transgenic beetroot. The applicant in the first case complained about his conviction for refusing to provide a biological sample to be stored on the national computerised DNA database; the applicants in the second case argued that the storage of their DNA on the national computerised database and the conviction of a number of them for refusing to provide a biological sample amounted to a violation of their right to respect for private life; the applicant in the third case submitted in particular that the order to take cell samples containing his genetic information constituted a disproportionate interference with his integrity and his private life.

The Court declared the applications **inadmissible** for failure to respect duty of confidentiality in friendly settlement negotiations. It considered that the applicants had violated the principle of confidentiality enshrined in Article 39 § 2 of the Convention and Rule 62 of the Rules of Court and that their conduct had constituted a violation of the right of individual petition for the purposes of Article 35 § 3 (a) of the Convention.

Robathin v. Austria

3 July 2012

A practising lawyer, the applicant complained about a search carried out in his office in 2006 and seizure of documents as well as all his electronic data following criminal proceedings brought against him on suspicion of theft, embezzlement and fraud of his clients. He was ultimately acquitted of all charges against him in 2011.

The Court held that there had been a **violation of Article 8** (right to respect for correspondence) of the Convention. It observed in particular that, although the applicant had benefited from a number of procedural safeguards, the review chamber to which he had referred the case had given only brief and rather general reasons when authorising the search of all the electronic data from the applicant's law office, rather than data relating solely to the relationship between the applicant and the victims of his alleged offences. In view of the specific circumstances prevailing in a law office, particular reasons should have been given to allow such an all-encompassing search. In the absence of such reasons, the Court found that the seizure and examination of all the data had gone beyond what was necessary to achieve the legitimate aim.

Bernh Larsen Holding As and Others v. Norway

14 March 2013

This case concerned the complaint by three Norwegian companies about a decision of the tax authorities ordering tax auditors to be provided with a copy of all data on a computer server used jointly by the three companies. The applicant companies alleged in particular that the measure in question had been taken in an arbitrary manner.

The Court held that there had been **no violation of Article 8** (right to respect for home and correspondence) of the Convention. It agreed with the Norwegian courts' argument that, for efficiency reasons, tax authorities' possibilities to act should not be limited by the fact that a tax payer was using a "mixed archive", even if that archive contained data belonging to other tax payers. Moreover, there were adequate safeguards against abuse.

M.K. v. France (no. 19522/09)

18 April 2013

The applicant, who had been the subject of two investigations concerning book theft, which ended in one case with his acquittal and in the other with a decision not to

prosecute, complained of the fact that his fingerprints had been retained on a database by the French authorities.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It considered, in view of the circumstances of the case, that the retention of the data in question had amounted to disproportionate interference with the applicant's right to respect for his private life.

Youth Initiative For Human Rights v. Serbia

25 June 2013

This case concerned access to information obtained via electronic surveillance by the Serbian Intelligence Agency. The applicant NGO complained that the intelligence agency's refusal to provide it with the information it had requested – it had requested to be provided with information on how many people the agency had subjected to electronic surveillance in 2005 – prevented it from exercising its role as "public watchdog".

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found that the agency's obstinate reluctance to comply with a final and binding order to provide information it had obtained was in defiance of domestic law and was tantamount to being arbitrary.

Under Article 46 (binding force and implementation) of the Convention, the Court further held that the most natural way to implement its judgment in this case would be to ensure that the agency provided the applicant NGO with the information it had requested on how many people had been subjected to electronic surveillance in 2005.

Nagla v. Latvia

16 July 2013

This case concerned the search by the police of a well-known broadcast journalist's home, and their seizure of data storage devices. The applicant's home was searched following a broadcast she had aired in February 2010 informing the public of an information leak from the State Revenue Service database. The applicant complained that the search of her home meant that she had been compelled to disclose information that had enabled a journalistic source to be identified, violating her right to receive and impart information.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It emphasised that the right of journalist's not to disclose their sources could not be considered a privilege, dependent on the lawfulness or unlawfulness of their sources, but rather as an intrinsic part of the right to information that should be treated with the utmost caution. In this case the investigating authorities had failed to properly balance the interest of the investigation in securing evidence against the public interest in protecting the journalist's freedom of expression.

Peruzzo and Martens v. Germany

4 June 2013 (decision on the admissibility)

The applicants, who had been convicted of serious criminal offences, complained under Article 8 (right to respect for private life) of the Convention about the domestic courts' orders to collect cellular material from them and to store it in a database in the form of DNA profiles for the purpose of facilitating the investigation of possible future crimes.

The Court declared the application **inadmissible** as being manifestly ill-founded. The measures complained of were found to constitute a proportionate interference with the applicants' right to respect for their private life and were necessary in a democratic society.

Brunet v. France

18 September 2014

The applicant complained in particular of an interference with his private life as a result of being added to the police database STIC (system for processing recorded offences) – containing information from investigation reports, listing the individuals

implicated and the victims – after the discontinuance of criminal proceedings against him.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding that the French State had overstepped its discretion to decide (“margin of appreciation”) on such matters: the retention could be regarded as a disproportionate breach of the applicant’s right to respect for his private life and was not necessary in a democratic society. The Court considered in particular that the applicant had not had a real possibility of seeking the deletion from the database of the information concerning him and that the length of retention of that data, 20 years, could be assimilated, if not to indefinite retention, at least to a norm rather than to a maximum limit.

Sérvulo & Associados - Sociedade de Advogados, RL v. Portugal

3 September 2015

This case concerned the search of a law firm’s offices and the seizure of computer files and email messages, during an investigation into suspected corruption, acquisition of prohibited interests and money laundering in connection with the purchase by the Portuguese Government of two submarines from a German consortium.

The Court held that there had been **no violation of Article 8** (right to respect for private life and correspondence) of the Convention. It found that, notwithstanding the scope of the search and seizure warrants, the safeguards afforded to the applicants against abuse, arbitrariness and breaches of legal professional secrecy had been adequate and sufficient. Hence, the search and seizure operations had not amounted to disproportionate interference with the legitimate aim pursued. The Court observed in particular that, after viewing the computer files and emails that had been seized, the investigating judge from the Central Criminal Investigation Court had ordered the deletion of 850 records which he considered to be private, to be covered by professional secrecy or to have no direct bearing on the case. The Court saw no reason to call into question the assessment made by the judge, who had intervened to review the lawfulness of the search and seizure operations and especially to protect legal professional secrecy. Moreover, in response to the applicants’ objection that the computer records seized had not been returned to them, the Court noted that the originals had been given back and that there was no obligation to return the copies, which could be retained throughout the limitation period for the crimes in question.

Szabó and Vissy v. Hungary

12 January 2016

This case concerned Hungarian legislation on secret anti-terrorist surveillance introduced in 2011. The applicants complained in particular that they could potentially be subjected to unjustified and disproportionately intrusive measures within the Hungarian legal framework on secret surveillance for national security purposes (namely, “section 7/E (3) surveillance”). They notably alleged that this legal framework was prone to abuse, notably for want of judicial control.

In this case the Court held that there had been a **violation of Article 8** of the Convention. It accepted that it was a natural consequence of the forms taken by present-day terrorism that governments resort to cutting-edge technologies, including massive monitoring of communications, in pre-empting impending incidents. However, the Court was not convinced that the legislation in question provided sufficient safeguards to avoid abuse. Notably, the scope of the measures could include virtually anyone in Hungary, with new technologies enabling the Government to intercept masses of data easily concerning even persons outside the original range of operation. Furthermore, the ordering of such measures was taking place entirely within the realm of the executive and without an assessment of whether interception of communications was strictly necessary and without any effective remedial measures, let alone judicial ones, being in place. The Court further held that there had been **no violation of Article 13** (right to an effective remedy) of the Convention **taken together with Article 8**,

reiterating that Article 13 could not be interpreted as requiring a remedy against the state of domestic law.

Pending applications

Centrum För Rättvisa v. Sweden (no. 35252/08)

Application communicated to the Swedish Government on 21 November 2011 and 14 October 2014

The applicant, a non-profit public interest law firm, complains about the Swedish state practice and legislation concerning secret surveillance measures.

The Court gave notice of the application to the Swedish Government and put questions to the parties under Articles 8 (right to respect for private life), 13 (right to an effective remedy) and 34 (individual applications) of the Convention.

Ivashchenko v. Russia (no. 61064/10)

Communicated to the Russian Government on 5 October 2011

The applicant is a photojournalist. When returning to Russia after a travel to Abkhazia where he had taken several photographs concerning, as he described it, "the life of this unrecognised Republic", his belongings, including a laptop and several electronic storage devices, were subjected to an inspection. The applicant complains in particular that the customs authorities unlawfully and without valid reasons examined the data contained on his laptop and storages devices. He further alleges that the actions of the customs authorities also amounted to a violation of his right to impart information. He argues in particular that no sufficient procedural safeguards were in place to protect him from unjustified interference or to protect journalistic sources.

The Court gave notice of the application to the Russian Government and put questions to the parties under Articles 8 (right to respect for private life and correspondence), 10 (freedom of expression) and 13 (right to an effective remedy) of the Convention.

Tretter and Others v. Austria (no. 3599/10)

Application communicated to the Austrian Government on 6 May 2013

This case concerns the amendments of the Police Powers Act, which entered into force in January 2008 and extended the powers of the police authorities to collect and process personal data.

The Court communicated the application to the Austrian Government and put questions to the parties under Articles 34 (right of individual petition), 8 (right to respect for private and family life and correspondence) and 10 (freedom of expression) of the Convention.

Dagregorio and Mosconi v. France (no. 65714/11) and Aycaguer v. France (no. 8806/12)

Applications communicated to the French Government on 26 March 2014

The applicants complain in particular about their conviction for refusing to undergo biological testing for the purposes of identifying their DNA. The data collected were to have been entered into the FNAEG automated DNA database (*Fichier national automatisé des empreintes génétiques*).

The Court gave notice of the applications to the French Government and put questions to the parties under Article 8 (right to respect for private life) of the Convention as well as, in the case of *Dagregorio and Mosconi*, under Article 14 (prohibition of discrimination) of the Convention.

Libert v. France (no. 588/13)

Application communicated to the French Government on 30 March 2015

The applicant complains in particular of a violation of his right to respect for his private life arising from the fact that his employer (The French national rail company, SNCF) opened files on his professional computer's hard drive named « D:/personal data » without him being present. He was later struck off because of the contents of the files in question.

The Court gave notice of the application to the French Government and put questions to the parties under Article 8 (right to respect for private life) of the Convention.

Big Brother Watch and Others v. the United Kingdom (no. 58170/13)

Application communicated to the UK Government on 9 January 2014

The applicants, three NGOs and one academic working internationally in the fields of privacy and freedom of expression, allege they are likely to have been the subjects of surveillance by the United Kingdom intelligence services. Their concerns have been triggered by media coverage following the revelations by Edward Snowden, a former systems administrator with the United States National Security Agency (the NSA).

The Court gave notice of the application to the UK Government and put questions to the parties under Article 8 (right to respect for private life) of the Convention.

Bureau of Investigative Journalism and Alice Ross v. the United Kingdom (no. 62322/14)

Application communicated to the UK Government on 5 January 2015

This case concerns the allegations of the applicants – the Bureau of Investigative Journalism and an investigative reporter who has worked for the Bureau – regarding the interception of both internet and telephone communications by government agencies in the United Kingdom, and, in particular, by the Government Communication Headquarters (GCHQ), as revealed by Edward Snowden, a former systems administrator with the United States National Security Agency (the NSA). The applicants mainly complain that the blanket interception, storage and exploitation of communication amount to disproportionate interference with journalistic freedom of expression.

The Court gave notice of the application to the UK Government and put questions to the parties under Articles 8 (right to respect for private life) and 10 (freedom of expression) of the Convention.

Similar application pending:

10 Human Rights Organisations and Others v. the United Kingdom (no. 24960/15)

Application communicated to the UK Government on 24 November 2015

The Court gave notice of the application to the UK Government and put questions to the parties under Articles 6 § 1 (right to a fair trial), 8 (right to respect for private life), 10 (freedom of expression), 14 (prohibition of discrimination) and 34 (individual applications) of the Convention.

E-mail

Copland v. the United Kingdom

3 April 2007

The applicant was employed by a college of further education, a statutory body administered by the State, as a personal assistant to the principal. From the end of 1995 she was required to work closely with the deputy principal. Her telephone, e-mail and internet usage were subjected to monitoring at the deputy principal's instigation. According to the UK Government, this was in order to ascertain whether the applicant was making excessive use of college facilities for personal purposes.

The Court held that there had been a **violation of Article 8** (right to respect for private life and correspondence) of the Convention. It first observed that telephone calls from business premises were *prima facie* covered by the notions of "private life" and "correspondence". It followed logically that e-mails sent from work should be similarly protected, as should information derived from the monitoring of personal internet usage. In the instant case, the Court considered that the collection and storage of personal information relating to the applicant's use of the telephone, e-mail and internet, without her knowledge, had amounted to an interference with her right to respect for her private life and correspondence. While leaving open the question whether the monitoring of an

employee's use of a telephone, e-mail or internet at the place of work might be considered "necessary in a democratic society" in certain situations in pursuit of a legitimate aim, the Court concluded that, in the absence of any domestic law regulating monitoring at the material time, the interference was not "in accordance with the law".

Muscio v. Italy

13 November 2007 (decision on the admissibility)

This case concerned the president of a Catholic parents' association who had received unsolicited e-mails (spam) of an obscene nature. Having instituted proceedings against a person or persons unknown, he contested the decision to take no further action on his complaint.

The Court declared **inadmissible**, as being manifestly ill-founded, the applicant's **complaint under Article 8** (right to respect for private and family life) of the Convention. It considered that receiving undesirable messages amounted to interference with the right to respect for private life. However, once connected to the Internet, e-mail users no longer enjoyed effective protection of their privacy and exposed themselves to the risk of receiving undesirable messages. In that context, the legal action brought by the applicant had had no chance of succeeding, since the national authorities and Internet service providers encountered objective difficulties in combating spam. The Court could not therefore require the State to make additional efforts to discharge its positive obligations under Article 8 of the Convention.

Benediktsdóttir v. Iceland

16 June 2009 (decision on the admissibility)

The applicant complained that, by affording her insufficient protection against unlawful publication of her private e-mails in the media, Iceland had failed to secure her rights guaranteed by Article 8 (right to respect for private life and correspondence). She submitted that an unknown third party had obtained the e-mails in question, without her knowledge and consent from a server formerly owned and operated by her former employer who had gone bankrupt. The e-mail communications consisted in particular of direct quotations or paraphrasing of e-mail exchanges between the applicant and the former colleague of a multinational company's Chief Executive Officer and his wishes to find a suitable lawyer to assist him in handing over to the police allegedly incriminating material he had in his possession and to represent him in a future court case against the leaders of the multinational company in question. At the time there was an ongoing public debate in Iceland relating to allegations that undue influence had been exerted by prominent figures on the most extensive criminal investigations ever carried out in the country.

The Court declared the application **inadmissible** as being manifestly ill-founded. It found that there was nothing to indicate that the Icelandic authorities had transgressed their margin of appreciation and had failed to strike a fair balance between the newspaper's freedom of expression and the applicant's right to respect for her private life and correspondence under Article 8 of the Convention.

Helander v. Finland

10 September 2013 (decision on the admissibility)

This case concerned a complaint brought by a prisoner that the prison authority had refused to forward legal correspondence to him, which had been sent to the prison's official e-mail address by his lawyer.

The Court declared the case **inadmissible**, as being manifestly ill-founded, as the applicant's lawyer had immediately been informed that his e-mail would not be conveyed to his client and that lawyer and client remained able at all times to communicate quickly by telephone, letter or personal visit. The Court also recognised that, under Finland's current legislation, lawyer-client confidentiality could not be guaranteed in e-mail correspondence, and that the prison authority therefore had a genuine reason for not forwarding the message on.

Sérvulo & Associados - Sociedade de Advogados, RL v. Portugal

3 September 2015

See above, under “Electronic data”.

GPS (Global Positioning System)

Uzun v. Germany

2 September 2010

The applicant, suspected of involvement in bomb attacks by a left-wing extremist movement, complained in particular that his surveillance via GPS and the use of the data obtained thereby in the criminal proceedings against him had violated his right to respect for private life.

The Court held that there had been **no violation of Article 8** (right to respect for private life) of the Convention. Given that the criminal investigation had concerned very serious crimes, it found that the GPS surveillance of the applicant had been proportionate.

Pending application

Ben Faiza v. France (no. 31446/12)

Application communicated to the French Government on 3 February 2015

The applicant in this case complains in particular of an interference with his private life on account of the installation of a GPS tracking device in his vehicle with the aim of monitoring his movements during the course of a drug trafficking inquiry.

The Court gave notice of the application to the French Government and put questions to the parties under Article 8 (right to respect for private life) of the Convention.

Internet

Perrin v. the United Kingdom

18 October 2005 (decision on the admissibility)

The case concerned the conviction and sentencing to 30 months’ imprisonment of a French national based in the United Kingdom – and operating a United States-based Internet company with sexually explicit content – for publishing obscene articles on Internet.

The Court rejected the applicant’s **complaint under Article 10** (freedom of expression) of the Convention as **inadmissible** (manifestly ill-founded). It was satisfied that the criminal conviction was necessary in a democratic society in the interests of the protection of morals and/or the rights of others and that the sentence was not disproportionate.

Paeffgen GmbH v. Germany

18 September 2007 (decision on the admissibility)

The case concerned proceedings brought against the applicant company, engaged in e-commerce, by other companies and private individuals claiming that its registration and use of certain Internet domains breached their trademark rights and / or their rights to a (business) name.

The Court declared **inadmissible**, as being manifestly ill-founded, the applicant company’s **complaint under Article 1** (protection of property) **of Protocol No. 1** to the Convention. It found that the court orders requiring the applicant company to cancel the domains had struck a fair balance between the protection of its possessions and the requirements of the general interest (i.e. to prevent the company from continuing to violate third parties’ trademark rights).

K.U. v. Finland (application no. 2872/02)

2 December 2008

This case concerned an advertisement of a sexual nature posted about a 12-year old boy on an Internet dating site. Under Finnish legislation in place at the time², the police and the courts could not require the Internet provider to identify the person who had posted the ad. In particular, the service provider refused to identify the person responsible, claiming it would constitute a breach of confidentiality.

The Court held that there had been a **violation of Article 8** (right to respect for private and family life) of the Convention. It considered that posting the ad was a criminal act which made a minor a target for paedophiles. The legislature should have provided a framework for reconciling the confidentiality of Internet services with the prevention of disorder or crime and the protection of the rights and freedoms of others, and in particular children and other vulnerable individuals.

Times Newspapers Ltd v. the United Kingdom (nos. 1 & 2)

10 March 2009

The applicant company, owner and publisher of *The Times* newspaper, alleged that the rule under United Kingdom law, whereby a new cause of action in libel proceedings accrues each time defamatory material on the Internet is accessed ("the Internet publication rule"), constituted an unjustifiable and disproportionate restriction on its right to freedom of expression. In December 1999 the applicant newspaper published two articles that were allegedly defamatory of a private individual. Both articles were uploaded onto *The Times'* website on the same day as they were published in the paper version of the newspaper. During the subsequent libel proceedings against the applicant newspaper, it was required to add a notice to both articles in the Internet archive announcing that they were subject to libel litigation and were not to be reproduced or relied on without reference to the applicant company's legal department.

In this judgment the Court underlined that, in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general. In the present case, it found that there had been **no violation of Article 10** (freedom of expression) of the Convention: since the archives were managed by the newspaper itself and the domestic courts had not suggested that the articles be removed altogether, the requirement to add an appropriate qualification to the Internet version had not been disproportionate.

Willem v. France

16 July 2009

This case concerned the call for a boycott of Israeli products by a mayor, notably via the municipality's internet site. The mayor was subsequently convicted of provoking discrimination.

The Court found that there had been **no violation of Article 10** (freedom of expression) of the Convention. The reasons given by the French courts to justify the interference with the applicant's freedom of expression had been "relevant and sufficient" for the purposes of Article 10. In addition, the fine imposed had been relatively moderate and proportionate to the aim pursued.

Renaud v. France

25 February 2010

The applicant complained of his conviction for defaming and publicly insulting a mayor on the Internet site of the association of which he was president and webmaster.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It considered that the applicant's conviction had been disproportionate to the legitimate aim of protecting the reputation and rights of others.

². A legal framework had been introduced by the time of the European Court of Human Rights' judgment under the Exercise of Freedom of Expression in Mass Media Act.

Editorial Board of Pravoye Delo and Shtekel v. Ukraine

5 May 2011

This case mainly concerned the lack of adequate safeguards in Ukrainian law for journalists' use of information obtained from the Internet. In particular, defamation proceedings had been brought against a local newspaper and its editor-in-chief following their publication of a letter downloaded from the Internet alleging that senior local officials were corrupt and involved with the leaders of an organised criminal gang. The domestic courts ruled against the applicants and ordered them to publish an apology and pay 15,000 Ukrainian hryvnias (approximately EUR 2,394), eventually waived via a friendly settlement.

The Court held that the order to the editor-in-chief to apologise had not been done in accordance with the law, and had, therefore, been in **violation of Article 10** (freedom of expression) of the Convention. It further held that there had been a **violation of Article 10** because of the lack of adequate safeguards for journalists using information obtained from the Internet. Notably, "having regard to the role the Internet plays in the context of professional media activities ... and its importance for the exercise of the right to freedom of expression generally ..., the Court consider[ed] that the absence of a sufficient legal framework at the domestic level allowing journalists to use information obtained from the Internet without fear of incurring sanctions seriously hinders the exercise of the vital function of the press as a 'public watchdog' ..." (§ 64 of the judgment).

Mosley v. the United Kingdom

10 May 2011

This case concerned the publication of articles, images and video footage in the *News of the World* newspaper and on its website which disclosed details of Max Mosley's sexual activities. The applicant complained about the authorities' failure to impose a legal duty on the newspaper to notify him in advance of further publication of the material so that he could seek an interim injunction.

The Court found that there had been **no violation of Article 8** (right to respect for private life) of the Convention. It held in particular that the European Convention on Human Rights did not require media to give prior notice of intended publications to those who feature in them.

Ahmet Yıldırım v. Turkey

18 December 2012

This case concerned a court decision to block access to Google Sites, which hosted an Internet site whose owner was facing criminal proceedings for insulting the memory of Atatürk. As a result of the decision, access to all other sites hosted by the service was blocked. The applicant complained that he was unable to access his own Internet site because of this measure ordered in the context of criminal proceedings without any connection to him or his site. He submitted that the measure infringed his right to freedom to receive and impart information and ideas.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found that the effects of the measure in question had been arbitrary and the judicial review of the blocking of access had been insufficient to prevent abuses.

Ashby Donald and Others v. France

10 January 2013

This case concerned the conviction of fashion photographers for copyright infringement following the publication on the Internet site of a fashion company run by two of the applicants, without the authorisation of the fashion houses concerned, of photos taken by the other applicant at fashion shows in 2003.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. In the circumstances of the case and regard being had to the particularly wide margin of appreciation open to the domestic authorities, the nature and

gravity of the penalties imposed on the applicants were not such that the Court could find that the interference in issue was disproportionate to the aim pursued.

Neij and Sunde Kolmisoppi v. Sweden

19 February 2013 (decision on the admissibility)

This case concerned the complaint by two of the co-founders of “The Pirate Bay”, one of the world’s largest websites for sharing torrent files, that their conviction for complicity to commit crimes in violation of the Copyright Act had breached their freedom of expression.

The Court declared the application **inadmissible** as being manifestly ill-founded. It held that sharing, or allowing others to share, files of this kind on the Internet, even copyright-protected material and for profit-making purposes, was covered by the right to “receive and impart information” under Article 10 (freedom of expression) of the Convention. However, it considered that the domestic courts had rightly balanced the competing interests at stake – i.e. the right of the applicants to receive and impart information and the necessity to protect copyright – when convicting the applicants.

Akdeniz v. Turkey

11 March 2014 (decision on the admissibility)

This case concerned the blocking of access to two websites on the grounds that they streamed music without respecting copyright legislation. The applicant, who had applied to the European Court of Human Rights as a user of the websites in question, complained in particular of a violation of his freedom of expression.

The Court declared the application **inadmissible** (incompatible *ratione personae*), finding that the applicant could not claim to be a “victim” in the sense of Article 34 (right of individual application) of the Convention. While stressing that the rights of internet users are of paramount importance, the Court nevertheless noted that the two music streaming websites had been blocked because they operated in breach of copyright law. As a user of these websites, the applicant had benefited from their services, and he had only been deprived of one way among others of listening to music. The Court further observed that the applicant had at his disposal many means to access to a range of musical works, without thereby contravening the rules governing copyright.

Delfi AS v. Estonia

16 June 2015 (Grand Chamber)

This was the first case in which the Court had been called upon to examine a complaint about liability for user-generated comments on an Internet news portal. The applicant company, which runs a news portal run on a commercial basis, complained that it had been held liable by the national courts for the offensive comments posted by its readers below one of its online news articles about a ferry company. At the request of the lawyers of the owner of the ferry company, the applicant company removed the offensive comments about six weeks after their publication.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention, finding that the Estonian courts’ finding of liability against the applicant company had been a justified and proportionate restriction on the portal’s freedom of expression, in particular, because: the comments in question had been extreme and had been posted in reaction to an article published by the applicant on its professionally managed news portal run on a commercial basis; the steps taken by the applicant to remove the offensive comments without delay after their publication had been insufficient; and the 320 euro fine had by no means been excessive for the applicant, one of the largest Internet portals in Estonia.

Cengiz and Others v. Turkey

1 December 2015

This case concerned the blocking of access to *YouTube*, a website enabling users to send, view and share videos. The applicants complained in particular of an infringement of their right to freedom to receive and impart information and ideas.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention, finding in particular that the applicants, all academics in different universities, had been prevented from accessing *YouTube* for a lengthy period of time and that, as active users, and having regard to the circumstances of the case, they could legitimately claim that the blocking order in question had affected their right to receive and impart information and ideas. The Court also observed that *YouTube* was a single platform which enabled information of specific interest, particularly on political and social matters, to be broadcast and citizen journalism to emerge. The Court further found that there was no provision in the law allowing the domestic courts to impose a blanket blocking order on access to the Internet, and in the present case to *YouTube*, on account of one of its contents.

Kalda v. Estonia

19 January 2016

This case concerned a prisoner's complaint about the authorities' refusal to grant him access to three Internet websites, containing legal information, run by the State and by the Council of Europe. The applicant complained in particular that the ban under Estonian law on his accessing these specific websites had breached his right to receive information via the Internet and prevented him from carrying out legal research for court proceedings in which he was engaged.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It found in particular that Contracting States are not obliged to grant prisoners access to Internet. However, if a State is willing to allow prisoners access, as is the case in Estonia, it has to give reasons for refusing access to specific sites. In the specific circumstances of the applicant's case, the reasons, namely the security and costs implications, for not allowing him access to the Internet sites in question had not been sufficient to justify the interference with his right to receive information. Notably, the authorities had already made security arrangements for prisoners' use of Internet via computers specially adapted for that purpose and under the supervision of the prison authorities and had borne the related costs. Indeed, the domestic courts had undertaken no detailed analysis as to the possible security risks of access to the three additional websites in question, bearing in mind that they were run by an international organisation and by the State itself.

Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary

2 February 2016

This case concerned the liability of a self-regulatory body of Internet content providers and an Internet news portal for vulgar and offensive online comments posted on their websites following the publication of an opinion criticising the misleading business practices of two real estate websites. The applicants complained about the Hungarian courts' rulings against them, which had effectively obliged them to moderate the contents of comments made by readers on their websites, arguing that that had gone against the essence of free expression on the Internet.

The Court held that there had been a **violation of Article 10** (freedom of expression) of the Convention. It reiterated in particular that, although not publishers of comments in the traditional sense, Internet news portals had to, in principle, assume duties and responsibilities. However, the Court considered that the Hungarian courts, when deciding on the notion of liability in the applicants' case, had not carried out a proper balancing exercise between the competing rights involved, namely between the applicants' right to freedom of expression and the real estate websites' right to respect for its commercial reputation. Notably, the Hungarian authorities accepted at face value that the comments had been unlawful as being injurious to the reputation of the real estate websites.

Dallas v. the United Kingdom

11 February 2016

This case concerned the applicant's conviction for contempt of court as a result of her conducting Internet research in relation to the criminal case she was trying as a juror.

The applicant complained that the common law offence of contempt of court had not been sufficiently clear.

The Court held that there had been **no violation of Article 7** (no punishment without law) of the Convention. It found in particular that the test for contempt of court applied in her case had been both accessible and foreseeable. The law-making function of the courts had remained within reasonable limits and the judgment in her case could be considered, at most, a step in the gradual clarification of the rules of criminal liability for contempt of court through judicial interpretation. Any development of the law had been consistent with the essence of the offence and could be reasonably foreseen.

Pending application

Bărbulescu v. Romania

12 January 2016 (Chamber judgment) – case referred to the Grand Chamber in June 2016

This case concerns the applicant's dismissal by his employer, a private company, for having used the company's Internet for personal purposes during working hours in breach of internal regulations. The applicant complains in particular that his employer's decision to terminate his contract was based on a breach of his privacy.

In its Chamber [judgment](#) of 12 January 2016 the Court held, by six votes to one, that there had been **no violation of Article 8** (right to respect for private and family life, the home and correspondence) of the Convention, finding that the domestic courts had struck a fair balance between the applicant's right to respect for his private life and correspondence under Article 8 and the interests of his employer. The Chamber observed, in particular, that the applicant's private life and correspondence had been engaged. However his employer's monitoring of his communications had been reasonable in the context of disciplinary proceedings.

On 6 June 2016 the Grand Chamber Panel [accepted](#) the Hungarian Government's request that the case be referred to the Grand Chamber.

Jankovskis v. Lithuania (no. 21575/08)

Application communicated to the Lithuanian Government on 21 September 2010

This case concerns in particular the refusal of prison authorities to give a convicted prisoner access to Internet.

The Court gave notice of the application to the Lithuanian Government and put questions to the parties under Article 10 (freedom of expression) of the Convention.

Smaniotto v. Luxembourg (no. 63296/14)

Application communicated to the Government of Luxembourg on 17 December 2014

This case concerns the refusal by the Court of Appeal to grant a right of reply on the Internet to a former employee of Radio Télé Luxembourg ("RTL") who had been mentioned by name on the Internet in the context of a case attracting widespread media coverage.

In December 2014 the Court gave notice of the application to the Government of Luxembourg and put [questions](#) to the parties under Articles 6 (right to a fair trial), 10 (freedom of expression) and 35 (admissibility criteria) of the Convention. In March 2016 it put additional [questions](#) to both parties.

Musical copyright

SIA AKKA/LAA v. Latvia

12 July 2016³

This case concerned a complaint about the restriction on the copyright of authors' musical work. The applicant, an organisation responsible for managing the copyright of the musical works of a large number of Latvian and international authors, complained

³. This judgment will become final in the circumstances set out in Article 44 § 2 (final judgments) of the [European Convention on Human Rights](#).

about decisions by the national courts ordering the applicant organisation and two radio companies to enter into a licence agreement and to set an equitable royalty rate. The applicant organisation notably alleged that those decisions had restricted the exclusive rights of the authors they represented to freely conclude licence agreements for the use of their musical works.

The Court held that there had been **no violation of Article 1** (protection of property) of **Protocol No. 1** to the Convention and **no violation of Article 6 § 1** (right to fair trial) of the Convention. It found in particular that the Latvian authorities had struck a fair balance between the demands of the public interest (namely, the radio companies' interest in obtaining a licence allowing them to legally broadcast work as well as the general public's interest in having access to musical works), on the one hand, and the rights of the applicant organisation to obtain equitable remuneration from the use of musical work, on the other. Indeed, the effort to maintain a balance between the competing interests could be seen in their decisions, which had observed that protected works were being broadcast without a valid licence over an extended period of time and that that situation had to a certain extent been due to the applicant organisation's limited efficiency in carrying out negotiations with the radio companies.

Radio communications

Brambilla and Others v. Italy

23 June 2016⁴

This case concerned the conviction of three journalists who intercepted radio communications between *carabinieri* in order to arrive quickly at crime scenes and report on them for their local newspaper.

The Court held that there had been **no violation of Article 10** (freedom of expression) of the Convention. Stressing the notion of responsible journalism and noting that the decisions of the domestic courts had been duly reasoned and had focused primarily on the need to protect national security and prevent crime and disorder, the Court found in particular that the Italian courts had made an appropriate distinction between on the one hand the duty of the three journalists to comply with domestic law, which prohibited in general terms the interception by any persons of communications not addressed to them, including those of the law-enforcement agencies, and on the other hand the pursuit of their journalistic activities, which had not been restricted per se. The Court also noted that the penalties ordered by the domestic courts, consisting in the seizure of the radio equipment and the imposition of custodial sentences, had not been disproportionate, as the sentences of the three journalists had been suspended and the authorities had not prohibited them from bringing news items to the public's attention.

Satellite dish

Khurshid Mustafa and Tarzibachi v. Sweden

16 December 2008

This case concerned a court decision not to prolong a private tenancy agreement owing to the refusal by the tenants, a married couple of Iraqi origin with three minor children, to remove a satellite dish used to receive television programmes from their country of origin. The landlord offered to allow the applicants to stay if they agreed to remove the satellite dish, but they refused and had to move out. The applicants complained of a violation of their freedom to receive information.

The Court held that there had been a **violation of Article 10** (freedom of expression – freedom to receive information) of the Convention. It observed in particular that the satellite dish had enabled the applicants and their children to receive television programmes in Arabic and Farsi from their native country and region. That information –

⁴. This judgment will become final in the circumstances set out in Article 44 § 2 of the [Convention](#).

which included political and social news and, almost equally importantly, cultural expression and entertainment – was of particular interest to them as an immigrant family who wished to maintain contact with the culture and language of their country of origin. It had not been claimed that the applicants had any other means of receiving such programmes at the time or that they could have placed the satellite dish elsewhere. Nor could news obtained from foreign newspapers and radio programmes in any way be equated with information available via television broadcasts. The landlord's concerns about safety had been examined by the domestic courts, who had found that the installation did not pose any real safety threat. Moreover, the fact that the applicants had effectively been evicted from their home with their three children had been disproportionate to the aim pursued.

Telecommunications

Roman Zakharov v. Russia

4 December 2015

This case concerned the system of secret interception of mobile telephone communications in Russia. The applicant, an editor-in-chief of a publishing company, complained in particular that mobile network operators in Russia were required by law to install equipment enabling law-enforcement agencies to carry out operational-search activities and that, without sufficient safeguards under Russian law, this permitted blanket interception of communications.

The Court held that there had been a **violation of Article 8** (right to respect for private life and correspondence) of the Convention, finding that the Russian legal provisions governing interception of communications did not provide for adequate and effective guarantees against arbitrariness and the risk of abuse which was inherent in any system of secret surveillance, and which was particularly high in a system such as in Russia where the secret services and the police had direct access, by technical means, to all mobile telephone communications. In particular, the Court found shortcomings in the legal framework in the following areas: the circumstances in which public authorities in Russia are empowered to resort to secret surveillance measures; the duration of such measures, notably the circumstances in which they should be discontinued; the procedures for authorising interception as well as for storing and destroying the intercepted data; the supervision of the interception. Moreover, the effectiveness of the remedies available to challenge interception of communications was undermined by the fact that they were available only to persons who were able to submit proof of interception and that obtaining such proof was impossible in the absence of any notification system or possibility of access to information about interception.

Pending applications

Breyer v. Germany (no. 50001/12)

Application communicated to the German Government on 21 March 2016

The application concerns the legal obligation of telecommunication providers to store personal details of all their customers.

The Court gave notice of the application to the German Government and put questions to the parties under Articles 8 (right to respect for private life and correspondence) and 10 (freedom of expression) of the Convention.

Ćalović v. Montenegro (no. 18667/11)

Application communicated to the Government of Montenegro on 31 March 2016

The applicant complains about the powers of the police to access directly all data of the mobile telecommunication provider to which she is subscribed, therefore including her own, in an uncontrolled manner.

The Court gave notice of the application to the Government of Montenegro and put questions to the parties under Articles 8 (right to respect for private life), 34 (individual applications) and 35 (admissibility criteria) of the Convention.

Use of hidden cameras

Haldimann and Others v. Switzerland

24 February 2015

This case concerned the conviction of four journalists for having recorded and broadcast an interview of a private insurance broker using a hidden camera, as part of a television documentary intended to denounce the misleading advice provided by insurance brokers. The applicants complained that their sentence to payment of fines had amounted to a disproportionate interference in their right to freedom of expression.

In this case, the Court was for the first time called on to examine an application concerning the use of hidden cameras by journalists to provide public information on a subject of general interest, whereby the person filmed was targeted not in any personal capacity but as a representative of a particular professional category. The Court held that, in the applicants' case, there had been a **violation of Article 10** (freedom of expression) of the Convention, considering in particular that the interference in the private life of the broker, who had turned down an opportunity to express his views on the interview in question, had not been serious enough to override the public interest in information on malpractice in the field of insurance brokerage. The Court further also asserted that the applicants deserved the benefit of the doubt in relation to their desire to observe the ethics of journalism as defined by Swiss law, citing the example of their limited use of the hidden camera.

Bremner v. Turkey

13 October 2015

This case concerned the broadcasting of a television documentary in which the applicant, who was shown promoting his evangelical Christian beliefs, was described as a "foreign pedlar of religion" engaged in covert activities in Turkey. The applicant alleged that the broadcasting of the documentary and the refusal of the judicial authorities to grant his request for compensation had breached his right to respect for his private life.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention, finding in particular that the broadcasting of the applicant's image without blurring it could not be regarded as a contribution to any debate of general interest for society, regardless of the degree of public interest in the question of religious proselytising. As regards the method used, the Court was of the view that a technique as intrusive and as damaging to private life must in principle be used restrictively. The Court was not unaware that, in certain cases, the use of hidden cameras might prove necessary for journalists when information was difficult to obtain by any other means. However, that tool had to be used in compliance with ethical principles and with restraint.

Video surveillance

Peck v. the United Kingdom

28 January 2003

In this case the applicant, who was suffering from depression, complained about the disclosure in the media of footage from a closed-circuit television (CCTV) camera mounted in the street showing him walking alone with a kitchen knife in his hand (he had subsequently attempted suicide by cutting his wrists, but the CCTV footage did not show this), which had resulted in images of himself being published and broadcast widely. He further complained of the lack of an effective domestic remedy in that regard.

The Court found that the disclosure of the footage by the municipal council had not been accompanied by sufficient safeguards and constituted disproportionate and unjustified interference with the applicant's private life, **in breach of Article 8** (right to respect for private life) of the Convention. Furthermore, at the relevant time, the applicant had not

had an effective remedy for breach of confidence, **in violation of Article 13** (right to an effective remedy) **read in conjunction with Article 8** of the Convention.

Perry v. the United Kingdom

17 July 2003

The applicant was arrested in connection with a series of armed robberies of mini-cab drivers and released pending an identification parade. When he failed to attend that and several further identification parades, the police requested permission to video him covertly. The applicant complained that the police had covertly videotaped him for identification purposes and used the videotape in the prosecution against him.

The Court held that there had been a **violation of Article 8** (right to respect for private life) of the Convention. It noted that there had been no indication that the applicant had had any expectation that footage would be taken of him in the police station for use in a video identification procedure and, potentially, as evidence prejudicial to his defence at trial. That ploy adopted by the police had gone beyond the normal use of this type of camera and amounted to an interference with the applicant's right to respect for his private life. The interference in question had further not been in accordance with the law because the police had failed to comply with the procedures set out in the applicable code: they had not obtained the applicant's consent or informed him that the tape was being made; neither had they informed him of his rights in that respect.

Köpke v. Germany

5 October 2010 (decision on the admissibility)

The applicant, a supermarket cashier, was dismissed without notice for theft, following a covert video surveillance operation carried out by her employer with the help of a private detective agency. She unsuccessfully challenged her dismissal before the labour courts. Her constitutional complaint was likewise dismissed.

The Court rejected the applicant's complaint under Article 8 (right to respect for private life) of the Convention as **inadmissible** (manifestly ill-founded). It concluded that the domestic authorities had struck a fair balance between the employee's right to respect for her private life and her employer's interest in the protection of its property rights and the public interest in the proper administration of justice. It observed, however, that the competing interests concerned might well be given a different weight in the future, having regard to the extent to which intrusions into private life were made possible by new, more and more sophisticated technologies.

Riina v. Italy

11 March 2014 (decision on the admissibility)

The applicant, who was sentenced to life imprisonment for having committed very serious crimes, including mafia-type conspiracy and multiple assassinations, complained of the fact that he was under constant video surveillance in his cell, including in the toilets. He contended that the domestic remedies available in respect of these measures were ineffective.

The Court declared the application **inadmissible** under Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private and family life) of the Convention, finding that the applicant had not exhausted the domestic remedies available to him to appeal against the application of the video surveillance measure.

Pending applications

Antović and Mirković v. Montenegro (no. 70838/13)

Application communicated to the Montenegrin Government on 3 December 2014

This case concerns the use of video surveillance in university classrooms, which the applicants – two university professors – claim violates domestic data protection law.

The Court gave notice of the application to the Montenegrin Government and put questions to the parties under Articles 8 (right to respect for private and family life) and 35 (admissibility criteria) of the Convention.

López Ribalda v. Spain (no. 1874/13) and Gancedo Giménez and Others v. Spain (no. 8567/13)

Applications communicated to the Spanish Government on 17 February 2015

This case concerns the use of video surveillance in the workplace, which was then used as evidence in national courts.

The Court gave notice of the applications to the Spanish Government and put questions to the parties Articles 6 (right to a fair trial) and 8 (right to respect for private and family life) of the Convention.

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