

Freedom of Expression and Article 10 ECHR
Summaries of 20 recent judgments (and decisions) of the European Court of Human Rights (ECtHR), published in Iris, Legal Observations of the European Audiovisual Observatory (www.obs.coe.int), 2005-2008,
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1. Nordisk Film & TV A/S v. Denmark, 8 December 2005 (undercover journalism, hidden camera, protection of sources)
2. Aydin Tatlav v. Turkey, 2 May 2006 (blasphemy, (not) an abusive attack on a religion or its symbols)
3. Sdruženi Jihočeské Matky v. Czech Republic, 10 July 2006 (access to public documents, principle, restrictions)
4. White v. Sweden, 19 September 2006 (presumption of innocence, right of privacy, public interest)
5. Klein v. Slovakia, 31 October 2006 (defamation, public debate, freedom of religion)
6. Mamère v. France, 7 November 2006 (defamation, public debate on TV, topic of public concern)
7. Radio Twist v. Slovakia, 19 December 2006 (leaked recordings of telephone conversation with a politician, news programme on radio, privacy, apology)
8. Case of Vereinigung Bildender Künstler v. Austria, 25 January 2007 (right of one's image, debasement and insult, human dignity, freedom of artistic expression and public debate, satire)
9. Dupuis and others v. France, 7 June 2007 (confidential information, breach of confidentiality, reporting on judicial investigation, media coverage)
10. Hachette Filipacchi Associés (*Paris-Match*) v. France, 14 June 2007 (photo of dead body, right of privacy, human dignity, assassination of public official, public interest)
11. Glas Nadezhda EOOD and Elenkov v. Bulgaria, 11 October 2007 (refusal to grant broadcasting licence, media authority, independence and transparency, judicial review)
12. Lindon, Otchakovsky and July v. France, 22 October 2007 (defamation of politician, freedom of artistic expression, political debate, hate speech, margin of appreciation)
13. Voskuil v. the Netherlands, 22 November 2007 and Tillack v. Belgium, 27 November 2007 (protection of journalistic sources)
14. Filatenko v. Russia, 6 December 2007 (defamation of political party and its leaders, political debate and electoral campaign, TV-journalist, live television show)
15. Stoll v. Switzerland, 10 December 2007 (breach of confidence, matter of public interest, journalistic ethics, diplomatic relations, good/bad faith of journalist, sensationalism)
16. Guja v. Moldova, 12 February 2008 (protection of whistle blower, matter of public interest, conditions for protecting whistle blowing under Art. 10 Convention)
17. Yalçın Küçük (nr. 3) v. Turkey, 22 April 2008 (incitement to hatred and hostility, separatist propaganda, membership of armed group, interview on TV, terrorism, no incitement to violence or armed resistance)
18. Alithia Publishing Company Ltd. & Constantinides v. Cyprus, 22 May 2008 (defamation, journalistic ethics, malice, facts and value judgments, credibility and reliability of evidence, proof of allegations, accurate and reliable information, margin of appreciation)
19. Meltex Ltd. and Mesrop Movsesyan v. Armenia, 17 June 2008 (granting of broadcasting licences, decisions taken by the regulatory authorities must be duly reasoned, guarantees against arbitrariness)
20. Flux (nr. 6) v. Moldova, 29 July 2008 (allegations of corruption, defamation, presumption of innocence, journalistic ethics, lack of journalistic investigation, right of reply, unprofessional behaviour of newspaper)

1. Nordisk Film & TV A/S v. Denmark, 8 December 2005 (undercover journalism, hidden camera and protection of journalistic sources, inadmissible)

In August 2002, by judgment of the Danish Supreme Court (*Højesteret*) the applicant company, Nordisk Film & TV, was compelled to hand over limited specified unedited footage and notes of a broadcasted television programme investigating paedophilia in Denmark. For making the programme, a journalist went undercover. He participated in meetings of "The Paedophile Association" and interviewed with hidden camera two members of the association who made incriminating statements regarding the realities of paedophilia in both Denmark and India, including advice on how to induce a child to chat over the internet and how easy it was to procure children in India. In the documentary broadcasted on national television false names were used and all persons' faces and voices were blurred. The day after the broadcast of the programme one of the interviewed persons, called "Mogens", was arrested and charged with sexual offences. For further investigation the Copenhagen Police requested that the un-shown portions of the recordings made by the journalist be disclosed. The journalist and the editor of the applicant company's documentary unit refused the request. Also the Copenhagen City Court and the High Court refused to grant the requested court order having regard to the need of the media to be able to protect their sources. The Supreme Court however found against the applicant company, so that the latter was compelled to hand over some parts of the unedited footage which solely related to "Mogens". The court order explicitly exempted the recordings and notes that would entail a risk of revealing the identity of some persons (a victim, a police officer and the mother of a hotel manager), who were interviewed while they were promised by the journalist that they could participate without the possibility of being identified. In November 2002 Nordisk Film & TV complained in Strasbourg that the Supreme Court's judgment breached its rights under Article 10 of the Convention, referring to the European Court's case law affording a high level of protection of journalistic sources.

In its decision of 8 December 2005 the Strasbourg Court has come to the conclusion that the judgment of the Danish Supreme Court did not violate Article 10 of the Convention. The Strasbourg Court is of the opinion that the applicant company was not ordered to disclose its journalistic sources of information, but that it was rather ordered to hand over part of its own-research material. The Court is not convinced that the degree of protection applied in this case can reach the same level as that afforded to journalists when it becomes to their right to keep their sources confidential under Article 10 of the Convention. The Court is also of the opinion that it is the state's duty to take measures designed to ensure that individuals within their jurisdiction are not subjected to inhuman or degrading treatment, including such ill-treatment administered by private individuals. These measures should provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment or sexual abuse of children of which the authorities had or ought to have knowledge. The European Court supports the opinion of the Danish Supreme Court that the non-edited recordings and the notes made by the journalist could assist the investigation and production of evidence in the case against "Mogens" and that it concerned the investigation of alleged serious criminal offences. Of particular importance is that the Supreme Court's judgment explicitly guaranteed that material which entailed the risk of revealing the identity of the journalist's sources was exempted from the court order and that the order only concerned the handover of a limited part of the unedited footage as opposed to more drastic measures such as for example a search of the journalist's home and workplace. In these circumstances the Strasbourg Court is satisfied that the order was not disproportionate to the legitimate aim pursued and that the reasons given by the Danish Supreme Court in justification of those measures were relevant and sufficient. Hence Article 10 of the Convention has not been violated. The application is manifestly ill-founded and is declared inadmissible.

The decision of the European Court makes clear that the Danish Supreme Court's order to compel the applicant to hand over the unedited footage is to be considered as an interference in the applicant's freedom of expression within the meaning of Article 10 § 1 of the Convention. *In casu* the interference however meets all the conditions of Article 10 § 2, including the justification as being "necessary in a democratic society". The Strasbourg Court is also of the opinion that the Supreme Court and the Danish legislation (Art. 172 and 804-805 of the Administration of Justice Act) clearly acknowledge that an interference with the protection of journalistic sources cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest, hence reflecting the approach developed in the Strasbourg Court's jurisprudence in the case of *Goodwin v. UK* (1996), *Roemen and Schmit v. Luxembourg* (2003) and *Ernst and others v. Belgium* (2003).

Decision as to the admissibility by the ECtHR (First Section), *Nordisk Film & TV A/S v. Denmark*, Application no. 40485/02, 8 December 2005

2. Aydin Tatlav v. Turkey, 2 May 2006 (blasphemy, (not) an abusive attack on a religion or its symbols)

In 1992 Erdoğan Aydin Tatlav, a journalist living in Istanbul, published a five volume book under the title *İslamiyet Gerçeği* (The Reality of Islam). In the first volume of the book he criticised Islam as a religion legitimising social injuries portraying them as "God's will". Following a complaint at the occasion of the fifth edition of the book in 1996, the journalist was prosecuted for publishing a work designed to defile one of the religions (art. 175 Crim. Code). He was sentenced to one year's imprisonment, which was converted into a fine.

Before the ECtHR Tatlav complained that this conviction had been in breach of Article 10 of the Convention, referring to the right of freedom of expression "without interference by public authority". Essentially, the Court evaluated whether the interference in the applicant's right could be legitimised for the protection of the morals and the rights of others as "necessary in a democratic society". The Court is of the opinion that certain passages of the book contained strong criticism of religion in a social-political context, but that these passages had no insulting tone and neither contained an abusive attack against Muslims or against sacred symbols of Muslim religion (See ECtHR *I.A. v. Turkey*, 13 September 2005, Iris 2005/10, 3-4). The Court did not exclude that Muslims could nonetheless feel offended by the caustic commentary on their religion, but this was not considered a sufficient reason to legitimise the criminal conviction of the author of the book. The Court also took account of the fact that although the book had first been published in 1992, no proceedings had been instituted until 1996, when the fifth edition was published. It was only following a complaint by an individual that proceedings had been instituted against the journalist. With regard the punishment imposed on Tatlav, the Court is of the opinion that a criminal conviction involving, moreover, the risk of a custodial sentence, could have the effect of discouraging authors and editors from publishing opinions about religion that were not conformist and could impede the protection of pluralism, which is indispensable for the healthy development of a democratic society. Taking into regard all these elements of the case, the Strasbourg Court considers the interference by the Turkish authorities disproportionate to the aims pursued. Consequently, the Court holds unanimously that there has been a violation of Article 10 of the Convention (see also ECtHR *Giniewski v. France*, 31 January 2006, Iris 2006/4, 2-3)

ECtHR (Second Section), *Aydin Tatlav v. Turkey*, Application no. 50692/99 of 2 May 2006

3. Sdruženi Jihočeské Matky v. Czech Republic, 10 July 2006 (access to public documents, principle, restrictions, inadmissible)

The ECtHR at several occasions has recognised "*the right of the public to be properly informed*" and "*the right to receive information*", but until recently the Court was very reluctant to derive from Article 10 of the European Convention on Human Rights a right to have

access to public or administrative documents. In the cases of *Leander v. Sweden* (1987), *Gaskin v. United Kingdom* (1989) and *Sîrbu v. Moldova* (2004) the Strasbourg Court has indeed recognised “that the public has a right to receive information as a corollary of the specific function of journalists, which is to impart information and ideas on matters of public interest”. The Court however was of the opinion that the freedom to receive information basically prohibits a government from restricting a person from receiving information that others wish or may be willing to impart to him. It was decided in these cases that the freedom to receive information as guaranteed by Article 10 could not be construed as imposing on a State positive obligations to disseminate information or to disclose information to the public.

In its decision on the admissibility the ECtHR for the first time has applied Article 10 of the Convention in a case where a request of access to administrative documents was refused by the authorities. The case concerns a refusal to give an ecologist NGO access to documents and plans regarding a nuclear power station in Temelin, Czech Republic. Although the Court is of the opinion that there hasn't been a breach of Article 10, it explicitly recognised that the refusal by the Czech authorities is to be considered as an interference with the right to receive information as it is guaranteed by Article 10 of the Convention. Hence, the refusal must meet the conditions set forth in Article 10 § 2. In the case of *Sdružení Jihočeské Matky v. Czech Republic* the Court refers to its traditional case law, emphasizing that the freedom to receive information “*visé essentiellement à interdire à un Etat d'empêcher quelqu'un de recevoir des informations que d'autres aspirent ou peuvent consentir à lui fournir*”. The Court is also of the opinion that it is difficult to derive from Article 10 a general right to have access to administrative documents, in the words of the Court “*il est difficile de déduire de la Convention un droit général d'accès aux données et documents de caractère administratif*”. The Court however recognizes that the refusal to give access to administrative documents, *in casu* relating to a nuclear power station, is to be considered as an interference in the applicant's right to receive information. The Court considers this to be “*une ingérence au droit de la requérante de recevoir des informations*”. Because the Czech authorities have motivated in a pertinent and sufficient way the refusal to give access to the requested documents, the Court is of the opinion that in this case there has been no breach of Article 10 § 2 of the Convention. The refusal was justified for the protection of the rights of others (industrial secrets), in the interest of national security (risk of terrorist attacks) and for the protection of health. The Court also emphasized that the request to have access to essentially technical information about the nuclear power station did not reflect a matter of public interest. For these reasons, it was obvious that there hadn't been an infringement of Article 10 of the Convention and hence the Court declared the application inadmissible.

The decision of 10 July 2006 in the case of *Sdružení Jihočeské Matky* is important however as it contains an explicit and undeniable recognition of the application of Article 10 in cases of a refusal of a request to have access to public or administrative documents. The right of access to administrative documents is not an absolute one and can indeed be restricted under the conditions of Article 10 § 2, which implies that such a refusal must be prescribed by law, have a legitimate aim and must be necessary in a democratic society. The decision of the Court of 10 July 2006 gives additional support and opens new perspectives for citizens, journalists and ngo's for having access to administrative documents in matters of public interest.

Decision by the ECtHR (Fifth Section), *Sdružení Jihočeské Matky v. Czech Republic*, Application no. 19101/03 of 10 July 2006

4. White v. Sweden, 19 September 2006 (presumption of innocence, right of privacy, public interest)

In 1996, the two main evening newspapers in Sweden, *Expressen* and *Aftonbladet*, published a series of articles in which various criminal offences were ascribed to Anthony

White, a British citizen residing in Mozambique. The articles also included an assertion that he had murdered Olof Palme, the Swedish Prime Minister, in 1986. Mr White was a well-known figure whose alleged illegal activities had already been the focus of media attention. The newspapers also reported statements of individuals who rejected the allegations made against Mr White. In interview published in *Expressen*, Mr White denied any involvement in the alleged offences.

Mr White brought a private prosecution against the editors of the newspapers for defamation under the Freedom of Press Act and the Swedish Criminal Code. The District Court of Stockholm acquitted the editors and found that it was justifiable to publish the statements and pictures, given that there was considerable public interest in the allegations. It further considered that the newspapers had a reasonable basis for the assertions and that they had performed the checks that were called for in the given circumstances, taking into regard the constraints of a fast news service. The Court of Appeal upheld the District Court's decision.

Mr White complained before the ECtHR in Strasbourg that the Swedish courts had failed to provide due protection for his name and reputation. He relied on Article 8 (right to respect for private and family life). The European Court found that a fair balance has to be struck between the competing interests, being the freedom of expression (Article 10) and the right to respect for privacy (Article 8), also taking into account that under Article 6 § 2 of the Convention individuals have a right to be presumed innocent of any criminal offence until proven guilty in accordance to the law. The Court first notes that as such the information published in both newspapers constituted defamation to the applicant. The statements clearly tarnished his reputation and disregarded his right to be presumed innocent until proven guilty as it appeared that Mr. White had not been convicted of any of the offences ascribed by him. However in the series of articles, the newspapers had endeavoured to present an account of the various allegations made which was as balanced as possible and the journalists had acted in good faith. Moreover, the unsolved murder of the former Swedish Prime Minister Olof Palme and the ongoing criminal investigations were matters of serious public interest and concern. The Strasbourg Court considered that the domestic courts made a thorough examination of the case and balanced the opposing interests involved in conformity with Convention standards. The European Court found that the Swedish courts were justified in finding that the public interest in publishing the information in question outweighed Mr White's right to the protection of his reputation. Consequently, there had been no failure on the part of the Swedish State to afford adequate protection of the applicant's rights. For these reasons, the Court considered that there had been no violation of Article 8.

ECtHR (Second Section), *White v. Sweden*, Application no. 42435/02 of 19 September 2006

5. Klein v. Slovakia, 31 October 2006 (defamation, public debate, freedom of religion)

In March 1997 the weekly magazine *Domino Efekt* published an article written by Martin Klein, a journalist and film critic. In this article Klein criticised Archbishop Ján Sokol for his televised proposal to have the distribution of the film "The People v. Larry Flint" withdrawn as well as the poster publicising it. The article contained slang terms and innuendos with oblique vulgar and sexual connotations, allusions to the Archbishop's alleged cooperation with the secret police of the former communist regime and an invitation to the members of the Catholic Church to leave their church.

On complaints filed by two associations, criminal proceedings were brought against Klein. The journalist was convicted of the offence of public defamation of a group of inhabitants of the republic for their belief and he was sentenced to a fine of 375 euros, in application of Article 198 of the Slovakian Criminal Code. The Regional Court of Košice considered the article in question as vulgar, ridiculing and offending and hence not enjoying protection under Article 10 of the European Convention. It concluded that by the content of the article Klein

had violated the rights, guaranteed by the Constitution, of a group of adherents to the Christian faith.

Contrary to the domestic courts' findings, the ECtHR is not persuaded that the applicant had discredited and disparaged a sector of the population on account of their Catholic faith. The applicant's strongly-worded pejorative opinion related exclusively to the Archbishop, a high representative of the Catholic Church in Slovakia. The fact that some members of the Catholic Church could have been offended by the applicant's criticism of the Archbishop and by his statement that he did not understand why decent Catholics did not leave that Church cannot affect that position. The Court accepts the applicant's argument that the article neither unduly interfered with the right of believers to express and exercise their religion, nor denigrated the content of their religious faith. Given that the article exclusively criticised the person of the Archbishop, the applicant's conviction of the criminal offence of defamation of other person's belief was in itself inappropriate in the particular circumstances of the case.

For those reasons, and despite the vulgar tone of the article, the Court found that it could not be concluded that by publishing the article the applicant interfered with the right to freedom of religion of others in a manner justifying the sanction imposed on him. The interference with his right to freedom of expression therefore neither corresponded to a pressing social need, nor was it proportionate to the legitimate aim pursued. The Court held unanimously that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society" and that there had been a violation of Article 10 of the European Convention.

ECtHR (Fourth Section), *Klein v. Slovakia*, Application no. 72208/01 of 31 October 2006

6. Mamère v. France, 7 November 2006 (defamation, public debate on TV, topic of public concern)

On 11 October 2000 the Paris Criminal Court found Mr. Noël Mamère, a leading member of the ecologist party *Les Verts* and member of parliament, guilty for public defamation of the director of the *Central Service for Protection against Ionising Radiation* (SCPRI), Mr. Pellerin. Mr. Mamère was ordered to pay a fine of 10,000 francs, about 1,525 euros. The Paris Court of Appeal upheld the conviction considering that Mr. Mamère's comments during a television programme were defamatory as they had damaged Mr. Pellerin's "honour and reputation" by accusing him of repeatedly having "knowingly supplied, in his capacity as a specialist on radioactivity issues, erroneous or simply untrue information about such a serious problem as the Chernobyl disaster, which was of potential consequence for the health of the French population". The Court found that Mr. Mamère had not acted in good faith, as he had not adopted a moderate tone in insisting forcefully and peremptorily that Mr. Pellerin had repeatedly sought to lie and to distort the truth about the consequences of the Chernobyl nuclear accident, spring 1986. Mr. Mamère had also attributed "pejorative characteristics" by using the adjective "sinister" and by saying that he suffered from "the Asterix complex". In May 2006 following a complaint by certain individuals suffering from thyroid cancer, the *Commission for Research and Independent Information on Radioactivity* (CRIIRAD) and the *French Association of Thyroid Disease Sufferers* (AFMT), have recognised that the official services at the time had lied and had underestimated the contamination of soil, air and foodstuffs following the Chernobyl disaster.

The Strasbourg Court in its judgment of 7 November 2006 observes that the conviction of Mr. Mamère for aiding and abetting public defamation of a civil servant had constituted an interference with his right to freedom of expression that had been prescribed by the Freedom of the Press Act of 29 July 1881 and had pursued one of the legitimate aims listed in Article 10 § 2, namely the protection of the reputation of others. The Court however considers the interference as not necessary in a democratic society, as the case obviously was one in

which Article 10 required a high level of protection of the right to freedom of expression. The Court underlines that the applicant's comments concerned topics of general concern, namely protection of the environment and of public health. Mr. Mamère also has been speaking in his capacity as an elected representative committed to ecological issues, so that his comments were to be regarded as political or "militant" expression. The Court reiterates that those who have been prosecuted on account of their comments on a matter of general concern should have the opportunity to absolve themselves of liability by establishing that they have acted in good faith and, in the case of factual allegations, by proving that they were true. In the applicant's case the comments in question were value judgments as well as factual allegations, so that the applicant should have been offered both those opportunities. As regards the factual allegations, since the acts criticised by the applicant had occurred more than ten years previously, the 1881 Freedom of the Press Act barred him from proving that his comments were true. While in general the Court could see the logic of such a time bar, it considered that where historical or scientific events were concerned, it might on the contrary be expected that over the course of time the debate would be enriched by new information that could improve people's understanding of reality. Furthermore, the Court is not persuaded by the French Court's reasoning concerning Mr. Mamère's lack of good faith and the insulting character of some of his statements. According to the European Court, Mr. Mamère's comments can be considered sarcastic but they remained within the limits of acceptable exaggeration or provocation. Furthermore, the question of Mr. Pellerin's personal and "institutional" liability was an integral part of the debate on a matter of general concern: as director of the SCPRI he had had access to the measures being taken and had on several occasions made use of the media to inform the public of the level of contamination, or rather, one might say, the lack of it, within the territory of France. In those circumstances, and having regard to the extreme importance of the public debate in which the comments in issue had been made, Mr. Mamère's conviction for defamation could not be said to have been proportionate and hence "necessary in a democratic society". The Court therefore holds that there has been a violation of Article 10.

ECtHR (First Section), *Mamère v. France*, Application no. 64772/01 of 7 November 2006,

7. Radio Twist v. Slovakia, 19 December 2006 (leaked recordings of telephone conversation with a politician, news programme on radio, privacy, apology)

In a judgment of 19 December 2006 the Strasbourg Court considered the conviction of a radio station a violation of the freedom of expression guaranteed by Article 10 of the Convention. The applicant, *Radio Twist* is a radio broadcasting company that was convicted for broadcasting in a news programme the recording of a telephone conversation between the State Secretary at the Ministry of Justice and the Deputy Prime Minister. The recording was accompanied by a commentary, clarifying that the recorded dialogue related to a politically influenced power struggle in June 1996 between two groups which had an interest in the privatisation of a major national insurance provider. Mr. D., the Secretary at the Ministry of Justice subsequently filed a civil action against *Radio Twist* for protection of his personal integrity. He argued that *Radio Twist* had broadcast the telephone conversation despite the fact that it had been obtained in an illegal manner. *Radio Twist* was ordered by the Slovakian courts to offer Mr. D. a written apology and to broadcast that apology within 15 days. The broadcasting company was also ordered to pay compensation for damage of a non-pecuniary nature, as the Slovakian courts considered the dignity and reputation of Mr. D. as a public official tarnished. Especially the broadcasting of the illegally tapped conversation was considered as an unjustified interference in the personal rights of Mr. D., as the protection of privacy also extends to telephone conversations of public officials.

The Strasbourg Court however disagrees with these findings by the Slovakian Courts. Referring to the general principles that the ECtHR has developed in its case law regarding freedom of expression in political matters, regarding the essential function of the press in a

democratic society and regarding the limits of acceptable criticism of politicians, the Court emphasizes that the context and content of the recorded conversation was clearly political and that the recording and commentary contained no aspects of any private-life dimension of the politicians concerned. Furthermore the Court refers to the fact that the news reporting by *Radio Twist* did not contain untrue or distorted information and that the reputation of Mr. D. seemed not to have been tarnished by the impugned broadcast, as he was shortly later elected as a judge of the Constitutional Court. The Court points out that *Radio Twist* was sanctioned mainly for the mere fact of having broadcast information which someone else had obtained illegally and had forwarded to the radio station. The Court is however not convinced that the mere fact that the recording had been obtained by a third person contrary to the law could deprive the broadcasting company which broadcast it of the protection of Article 10 of the Convention. The Court also notes that at no stage it was alleged that the broadcasting company or its employees or agents were in any way liable for the recording or that its journalists transgressed the criminal law when obtaining or broadcasting it. The Court observes that there is no indication that the journalists of *Radio Twist* acted in bad faith or that they pursued any objective other than reporting on matters which they felt obliged to make available to the public. For these reasons the Court comes to the conclusion that by broadcasting the telephone conversation in question, *Radio Twist* did not interfere with the reputation and rights of Mr. D. in a manner that could justify the sanction imposed on it. Hence the interference with its rights to impart information did not correspond to a pressing social need. The interference being not necessary in a democratic society amounted to a violation of Article 10 of the Convention.

ECtHR (Fourth Section), *Radio Twist S.A. v. Slovakia*, Application no. 62202/00 of 19 December 2006

8. Case of *Vereinigung Bildender Künstler v. Austria*, 25 January 2007 (right of one's image, debasement and insult, human dignity, freedom of artistic expression and public debate, satire)

In a judgment of 25 January 2007 the Strasbourg Court considered the conviction of an association of artists a violation of the freedom of expression guaranteed by Article 10 of the Convention. The association, *Vereinigung Bildender Künstler Wiener Secession*, had organised in 1998 an exhibition entitled "The century of artistic freedom". One painting entitled "Apocalypse", made by the Austrian painter Otto Mühl, was a collage of 34 public figures, who all were portrayed naked and involved in sexual activities. Among those portrayed was Mr. Meischberger, a former general secretary of the Austrian Freedom Party (FPÖ) and at the time a member of the National Assembly. Mr. Meischberger was shown gripping the ejaculating penis of Mr. Jörg Haider (FPÖ) while at the same time being touched by two other FPÖ politicians and ejaculating on Mother Teresa.

The painting raised a lot of controversy and was ultimately vandalised by a visitor to the exhibition, who covered the part which showed Mr. Meischberger, among others, with red paint. Mr. Meischberger brought proceedings under Section 78 of the Austrian Copyright Act against the association, seeking an injunction prohibiting it from exhibiting and publishing the painting and requesting compensation. He argued that the painting debased him and his political activities. After the Vienna Commercial Court (*Handelsgericht*) dismissed Mr. Meischberger's action, the Vienna Court of Appeal (*Oberlandesgericht*) found that the painting constituted indeed a debasement of Mr. Meischberger's public standing and issued an injunction against the association prohibiting it from displaying the painting at exhibitions and ordering it to pay EUR 1,450 in compensation and costs to Mr. Meischberger. The judgment was confirmed by the Supreme Court (*Oberster Gerichtshof*), considering that the Court of Appeal rightly had motivated why in this case the personal rights of Mr. Meischberger as protected by Article 78 of the Copyright Act prevailed over the artistic freedom protected by Article 17a of the Basic Law (*Staatsgrundgesetz*), because a picture of Mr. Meischberger has been used in a degrading and insulting manner.

The ECtHR could not agree with the findings by the Vienna Court of Appeal and the Supreme Court, as it considered the painting, seen in its context, as protected under the right of freedom of expression. The Court noted first of all that the painting, in its original state, depicted Mr. Meischberger in a somewhat outrageous manner, but that the figures of the painting were caricatures and the painting satirical. According to the Court, satire is to be considered a form of artistic expression and social comment which, by exaggerating and distorting reality, is intentionally provocative. The Court is of the opinion that the painting did not concern Mr. Meischberger's private life, but his public standing as a politician. The scene in which he was portrayed could be understood to constitute some sort of counter-attack against the Austrian Freedom Party, whose members had strongly criticised the painter's work. The Court also observes that, even before Mr. Meischberger brought proceedings, the part of the painting showing his body was completely covered by red paint. From that time onwards, Mr Meischberger's portrayal – even assuming that he was still recognisable – was certainly diminished, if not totally eclipsed, by the portrayal of all the other, mostly more prominent, people who were still completely visible. The Court lastly noted that the Austrian courts' injunction was not limited either in time or in space. It therefore left the association of artists, which directed one of the best-known Austrian galleries specialising in contemporary art, with no possibility of exhibiting the painting, irrespective of whether Mr. Meischberger was known, or was still known, at the place and time of a potential exhibition in the future. The Court concluded that the Austrian courts' injunction was disproportionate to the aim pursued and therefore not necessary in a democratic society, in violation of Article 10.

With this approach the majority of the Court rejected the firm arguments developed in the dissenting opinions by the Cypriot, the Norwegian and the Luxemburg judge, who considered the painting "senseless", containing "disgusted images", with "repulsive sexual poses, some even involving violence", being manifestly "insulting" and "undermining the reputation or dignity of others". The dissenters emphasized that freedom of expression cannot be unlimited, especially when it interferes excessively with the right of others. The excessive nature of the portrayal resulted from its attack on the dignity of others, a concept that prevails throughout the European Convention on Human Rights. One of the dissenting opinions also emphasized that "nobody can rely on the fact that he is an artist or that a work is a painting in order to escape liability for insulting others". The majority of the Court however, without recognising an '*exception artis*', underlined that the pictures were painted in an unrealistic and exaggerated matter which amounted to a caricature of the persons concerned using satirical elements.

In a controversial case and in a controversial judgment, by four votes to three the Court came to the conclusion that there has been a violation of Article 10 of the Convention. The judgment is an important moral and legal support for artists and cartoonists producing satirical works, satire in the wording of the Court being "a form of artistic expression and social commentary and, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate". Accordingly any interference with an artist's right to such expression must be examined with particular care, as the Court demonstrated in its judgment of 25 January 2007.

ECtHR (First Section), *Vereinigung Bildender Künstler v. Austria*, Application no. 68354/01 of 25 January 2007

9. Dupuis and others v. France, 7 June 2007 (confidential information, breach of confidentiality, reporting on judicial investigation, media coverage)

In a judgment of 7 June 2007 the Court unanimously is of the opinion that the French authorities have violated the freedom of expression of two journalists and a publisher (Fayard) . Both journalists were convicted for using confidential information published in their book "The Ears of the President" (*Les Oreilles du Président*). The book focussed on the "Elysée eavesdropping operations", an illegal system of telephone tapping and record-

keeping, orchestrated by the highest office of the French State and directed against numerous figures from civil society, including journalists and lawyers. The French Courts found the two journalists, Dupuis and Pontaut, guilty of the offence of using information obtained through a breach of the confidentiality of the investigation or of the professional confidentiality. It was also argued that the publication could be detrimental for the presumption of innocence of Mr. G.M., the deputy director of President Mitterrand's private office at the material time, who was placed under formal investigation for breach of privacy under suspicion of being the responsible person for the illegal telephone tapping.

The European Court observes that the subject of the book concerned a debate of considerable public interest, an affair of state, which was of interest to public opinion. The Court also refers to the status of Mr. G.M. as a public person, clearly involved in political life at the highest level of the executive while the public had a legitimate interest to be informed about the trial, and in particular, about the facts dealt with or revealed in the book. The Court finds it legitimate that special protection should be granted to the confidentiality of the judicial investigation, in view of the stakes of criminal proceedings, both for the administration of justice and for the right of persons under investigation to be presumed innocent. However, at the time when the book was published, the case had already undergone wide media coverage and it was already well known that Mr. G.M. had been placed under investigation in this case. Hence, the protection of the information on account of its confidentiality did not constitute an overriding requirement. The Court also questions whether there was still an interest in keeping information confidential when it had already been at least partly made public and was likely to be widely known, having regard to the media coverage of the case. The Court further considers that it is necessary to take the greatest care in assessing the need to punish journalists for using information obtained through a breach of the confidentiality of an investigation or of professional confidentiality when those journalists are contributing to a public debate of such importance, thereby playing their role as "watchdogs" of democracy. According to the Court, the journalists had acted in accordance with the standards governing their profession as journalists: the impugned publication was relevant not only to the subject matter but also to the credibility of the information supplied. Lastly, the Court underlines that the interference with freedom of expression might have a chilling effect on the exercise of that freedom – an effect that the relatively moderate nature of the fine, as in the present case, would not suffice to negate. As the conviction of the two journalists had constituted a disproportionate interference with their right to freedom of expression it was therefore not necessary in a democratic society. Accordingly, there has been a violation of Article 10 of the Convention.

ECtHR (Third Section), case of *Dupuis and others v. France*, Application no. 1914/02 of 7 June 2007

10. Hachette Filipacchi Associés (*Paris-Match*) v. France, 14 June 2007 (photo of dead body, right of privacy, human dignity, assassination of public official, public interest)

Short after the Prefect of Corsica, Claude Erignac, was murdered in Ajaccio in February 1998, an issue of the weekly magazine *Paris-Match* contained an article entitled "La République assassinée" (The murdered Republic). The article was illustrated by a photograph of the Prefect's body lying on the road, facing the camera. The widow and children of Prefect Erignac sought injunctions against several companies, including the publishing company of *Paris-Match*, Hachette Filipacchi Associés. They contended that publication of the photograph of the bloodied and mutilated body of their relative was not information which could possibly be useful to the public, but was prompted purely by commercial considerations and constituted a particularly intolerable infringement of their right to respect for their private life. The urgent applications judge issued an injunction requiring the Hachette Filipacchi company to publish at its own expense in *Paris-Match* a statement informing readers that Mrs. Erignac and her children had found the photograph showing the dead body of Prefect Erignac published in *Paris-Match* deeply distressing. Few days later the

Paris Court of Appeal upheld the injunction, noting, among other considerations, that publication of the photograph, while Prefect Erignac's close family were still mourning his loss, and given the fact that they had not given their consent, constituted a gross disturbance of their grief, and accordingly of the intimacy of their private life. It ruled that such a photograph infringed human dignity and ordered the Hachette Filipacchi company to publish at its own expense in Paris-Match a statement informing readers that the photograph had been published without the consent of the Erignac family, who considered its publication an intrusion into the intimacy of their private life. On 20 December 2000 the Court of Cassation dismissed an appeal on points of law by the applicant company.

Relying on Article 10, the publishing house of Paris-Match complained before the ECtHR of the injunction requiring it to publish, on pain of a coercive fine, a statement informing readers that the photograph had been published without the consent of the Erignac family. The Court considered that the obligation to publish a statement amounted to an interference by the authorities with the company's exercise of its freedom of expression. The Court noted that the practice of requiring publication of a statement was sanctioned by a long tradition of settled French case-law and was regarded by the French courts as "one of the ways of making good damage caused through the press." It considered that this case-law satisfied the conditions of accessibility and foreseeability required for a finding that this form of interference was "prescribed by law" within the meaning of Article 10 § 2 of the Convention. The Court also considered that the interference complained of had pursued a legitimate aim (the protection of the rights of others) and it noted that the rights concerned fell within the scope of Article 8 of the Convention, guaranteeing the right to respect for private and family life. The crucial question which the Court had to answer was whether the interference had been "necessary in a democratic society", within the framework of duties and responsibilities inherent in exercise of the freedom of expression. In this respect the Court reiterated that the death of a close relative and the ensuing mourning, which were a source of intense grief, must sometimes lead the authorities to take the necessary measures to ensure respect for the private and family lives of the persons concerned. In the present case, the offending photograph had been published only few days after the murder and after the funeral. The Court considered that the distress of Mr. Erignac's close relatives should have led journalists to exercise prudence and caution, given that he had died in violent circumstances which were traumatic for his family, who had expressly opposed publication of the photograph. The result of publication, in a magazine with a very high circulation, had been to heighten the trauma felt by the victim's close relatives in the aftermath of the murder, so that they were justified in arguing that there had been an infringement of their right to respect for their private life. The Court also considered that the wording of the statement Paris-Match had been ordered to publish, revealed the care the French courts had taken to respect the editorial freedom of Paris-Match. That being so, the Court considered that of all the sanctions which French legislation permitted, the order to publish the statement was the one which, both in principle and as regards its content, was the sanction entailing the least restrictions on exercise of the applicant company's rights. It noted that the Hachette Filipacchi company had not shown in what way the order to publish the statement had actually had a dissuasive effect on the way Paris-Match had exercised and continued to exercise its right to freedom of expression. In conclusion the Court considered that the order requiring Paris-Match to publish a statement, for which the French courts had given reasons which were both "relevant and sufficient", had been proportionate to the legitimate aim it pursued, and therefore "necessary in a democratic society". Accordingly, the Court held by 5 votes to 2 that there had been no violation of Article 10 of the European Convention on Human Rights. The two dissenting judges expressed their firm disagreement with the finding of the majority in two separate dissenting opinions, annexed to the judgment.

11. Glas Nadezhda EOOD and Elenkov v. Bulgaria, 11 October 2007 (refusal to grant broadcasting licence, media authority, independence and transparency, judicial review)

In 2000 *Glas Nadezhda EOOD*, of which Mr. Elenkov is the manager, applied to the State Telecommunications Commission (the "STC") for a licence to set up a radio station to broadcast Christian programmes in and around Sofia. The STC refused to grant the licence, basing its refusal on the decision taken by the National Radio and Television Committee (the "NRTC") which found that, on the basis of the documents submitted by *Glas Nadezhda EOOD*, the proposed radio station would not meet its requirements to make social and business programmes or to target regional audiences. The proposals also failed to fully meet its requirements to produce original programmes, to ensure audience satisfaction and to provide the professional and technological resources required.

Glas Nadezhda EOOD brought proceedings before the Supreme Administrative Court for judicial review of both STC's and NRTC's decision, but finally the Court held that the NRTC had total discretion in assessing whether an application for a broadcasting licence had met certain criteria and that this discretion was not open to judicial scrutiny. In the meantime, Mr. Elenkov attempted to obtain a copy of the minutes of the NRTC's deliberations, which were meant to be available to the public under the Access to Public Information Act 2000. Despite his requests and a court order, Mr. Elenkov was not given access to those minutes.

Relying on Articles 9 (freedom of thought, conscience and religion) and 10 (freedom of expression), the applicants complained that they were refused a broadcasting licence. They also complained under Article 13 (right to an effective remedy) about the ensuing judicial review proceedings.

The Court is of the opinion that the interference in the freedom of expression of the applicants did not meet the requirements of lawfulness as prescribed by Article 10 § 2. The NRTC had not held any form of public hearing and its deliberations had been kept secret, despite a court order obliging it to provide the applicants with a copy of its minutes. Furthermore, the NRTC had merely stated in its decision that *Glas Nadezhda EOOD* had not or had only partially corresponded to a number of its criteria. No reasoning was given to explain why the NRTC came to that conclusion. And no redress had been given for that lack of reasoning in the ensuing judicial review proceedings because it had been held that the NRTC's discretion had not been reviewable. That, together with the NRTC's vagueness concerning certain criteria for programmes, had denied the applicants legal protection against arbitrary interference with their freedom of expression. The Court notes that the guidelines adopted by the Committee of Ministers of the Council of Europe in the broadcasting regulation domain call for open and transparent application of the regulations governing the licensing procedure and specifically recommend that "[a]ll decisions taken ... by the regulatory authorities ... be ... duly reasoned [and] open to review by the competent jurisdictions" (*Recommendation 2000/23 on the independence and functions of regulatory authorities for the broadcasting sector*). Consequently, the Court concludes that the interference with the applicants' freedom of expression had not been lawful and held that there had been a violation of Article 10.

Having regard to its findings under Article 10, the Court considers that it is not necessary to additionally examine whether there has been a violation of Article 9 of the Convention. The Court on the other hand comes to the conclusion that there has been a violation of Article 13. The Court observes that the Supreme Administrative Court made it clear that it could not scrutinise the manner in which that body had assessed the compliance of *Glas Nadezhda EOOD*'s programme documents with the relevant criteria, that assessment being within the NRTC's discretionary powers. The Supreme Administrative Court thus refused to interfere with the exercise of NRTC's discretion on substantive grounds and did not examine the

issues going to the merits of the applicants' Article 10 grievance. Referring to its case law in some similar cases, the Court concludes that the approach taken by the Supreme Administrative Court – refusing to interfere with the exercise of NRTC's discretion on substantive grounds – fell short of the requirements of Article 13 of the Convention.

ECtHR (Fifth Section), *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, Application no. 14134/02 of 11 October 2007

12. Lindon, Otchakovsky-Laurens and July v. France, 22 October 2007 (defamation of politician, freedom of artistic expression, political debate, hate speech), extract from press release ECtHR

Mr Lindon is a writer, Mr Otchakovsky-Laurens is the chairman of the board of directors of the publishing company P.O.L., and Mr July was the publication director of *Libération*. In August 1998 P.O.L. published a novel by Mr Lindon called *Le Procès de Jean-Marie Le Pen* ("Jean-Marie Le Pen on Trial"). The novel recounts the trial of a *Front National* militant, who, while putting up posters for his party with other militants, committed the cold-blooded murder of a young man of North African descent and admitted that it was a racist crime. The novel is based on real events and in particular the murders, in 1995, of Brahim Bouaram, a young Moroccan who was thrown into the River Seine by skinheads during a *Front National* march, and of Ibrahim Ali, a young Frenchman of Comorian origin who was killed in Marseilles by *Front National* militants. The novel raises questions about the responsibility of Mr Le Pen, Chairman of the *Front National*, for murders committed by militants, and about the effectiveness of strategies to combat the far right. Following the publication of the novel, the *Front National* and Mr Le Pen brought defamation proceedings against Mr Lindon and Mr Otchakovsky-Laurens.

On 11 October 1999 Paris Criminal Court convicted Mr Otchakovsky-Laurens of defamation and Mr Lindon of complicity in that offence. They were each fined the equivalent of 2,286.74 euros (EUR) and ordered to pay, jointly, EUR 3,811.23 in damages both to Mr Le Pen and the *Front National*. The court found four passages from the book to be defamatory:

1. that Mr Le Pen led "a gang of killers" and that "people would have voted for Al Capone too";
2. that the *Front National* used violence against anyone who left the party;
3. that behind each of Mr Le Pen's assertions "loomed the spectre of the worst abominations of the history of mankind"; and,
4. that he was a "vampire" who thrived on the "bitterness of his electorate, but sometimes also on their blood, like the blood of his enemies" and that he was a liar who used defamation against his opponents to deflect accusations away from himself.

On 16 November 1999 *Libération* published a petition signed by 97 contemporary writers in its column "Rebonds" to protest about the conviction of Mr Lindon and Mr Otchakovsky-Laurens. The petition disputed whether the passages in question were in fact defamatory and reproduced them verbatim. Mr July was subsequently summoned by the *Front National* and Mr Le Pen to appear before Paris Criminal Court, which, in a judgment of 7 September 2000, found him guilty of defamation and sentenced him to pay a fine equivalent to EUR 2,286.74 and EUR 3,811.23 in damages, for having reproduced the relevant passages from the novel.

In a judgment of 13 September 2000, on an appeal lodged by Mr Lindon and Mr Otchakovsky-Laurens, Paris Court of Appeal upheld their convictions in respect of three passages (1., 3. and 4. above). The court reasoned that the author had only sufficiently distanced himself from the views expressed in relation to passage no. 2; the other three passages had not been subjected to basic verification and were not sufficiently dispassionate. On 27 November 2001 a further appeal on points of law was dismissed by the Court of Cassation.

On 21 March 2001 Mr July's conviction was upheld by Paris Court of Appeal, which found that the authors of the petition had intended to show their support for Mr Lindon "by repeating

with approval, out of defiance, all the passages that had been found defamatory by the court, and without even really calling into question the defamatory nature of the remarks". The court went on "its line of argument is built around reference to precise facts. There was therefore an obligation to carry out a meaningful investigation before making particularly serious accusations such as incitement to commit murder, and to avoid offensive expressions". On 3 April 2002 the Court of Cassation dismissed Mr July's appeal on points of law.

In a judgment given by the Grand Chamber of the ECtHR the complaints of Lindon, Otchakovsky-Laurens and July did not lead to a finding of a violation of Article 10 by the French authorities.

The Court found that applicants' convictions had a clear, legal basis (sections 29 and 32 of the Freedom of the Press Act of 29 July 1881). French case law indicated that Section 29 of the Act covered fiction, where the honour or reputation of a clearly identified individual was concerned. The European Court further found that their conviction pursued the legitimate aim of protecting the reputation or rights of others.

Concerning the writer and publisher

The Court reiterated that those who created or distributed a work, for example of a literary nature, contributed to the exchange of ideas and opinions which was essential for a democratic society. Hence the obligation on the State concerned not to encroach unduly on their freedom of expression. However, it appeared that the penalty imposed on Mr **Lindon** and Mr Otchakovsky-Laurens concerned, not the arguments expounded in the novel, but the content of certain passages. The Court recalled that novelists, other creators and anyone exercising freedom of expression had duties and responsibilities.

The domestic courts' view on whether the passages in question were defamatory could not be criticised in view of the virulent content of those passages and the fact that they specifically named the *Front National* and its chairman. It was also apparent that it was for the author's benefit that the Court of Appeal sought to determine those remarks from which the author really distanced himself in his work. As a result, the court found that one of the four passages was not defamatory.

The Court of Appeal's findings that the three passages had not been subjected to basic verification was in line with the European Court's case-law. In order to assess the justification of a statement, a distinction needed to be made between statements of fact and value judgments. While the existence of facts could be demonstrated, the truth of value judgments was not susceptible of proof. Even where a statement amounted to a value judgment, however, there had to exist a sufficient factual basis to support it. Generally speaking there was no need to make that distinction when dealing with extracts from a novel. It nevertheless became fully pertinent when, as in the applicants' case, the work in question was not one of pure fiction but introduced real characters or facts. It was all the more acceptable to require the applicants to show that the allegations contained in the passages from the novel that were found to be defamatory had a "sufficient factual basis" as they were not merely value judgments but also allegations of fact. Overall the Court considered that the Court of Appeal had adopted a measured approach and that it had made a reasonable assessment of the facts.

Having regard to the content of the offending passages, the Court also considered that the Court of Appeal's finding that they were not sufficiently "dispassionate" was compatible with its case-law. It was true that, while an individual taking part in a public debate on a matter of general concern was required not to overstep certain limits as regards respect for the reputation and rights of others, he or she was allowed to have recourse to a degree of exaggeration or even provocation, or to make somewhat immoderate statements. It was also true that the limits of acceptable criticism were wider as regards a politician – or a political

party – such as Mr Le Pen and the Front National – as such, than as regards a private individual. This was particularly true in the applicants' case as Mr Le Pen, a leading politician, was known for the virulence of his speech and his extremist views, on account of which he had been convicted a number of times on charges of incitement to racial hatred, trivialising crimes against humanity, making allowances for atrocities, apologia for war crimes, proffering insults against public figures and making offensive remarks. As a result, he had exposed himself to harsh criticism and had therefore to display a particularly high degree of tolerance in that context.

The Court nevertheless considered that the Court of Appeal made a reasonable assessment of the facts in the applicants' case in finding that to liken an individual, though he be a politician, to the leader of "a gang of killers", to assert that a murder, even one committed by a fictional character, was "advocated" by him, and to describe him as a "vampire who thrives on the bitterness of his electorate, but sometimes also on their blood", "oversteps the permissible limits in such matters".

Considering that those involved in political struggles should show a minimum degree of moderation and propriety, the Court also noted that the passages were such as to stir up violence and hatred, going beyond what was tolerable in political debate, even in respect of a figure who occupied an extremist position in the political spectrum. The Court therefore found that the "penalty" imposed on the applicants was based on "relevant and sufficient" reasons. The amount of the fine was also moderate. The Court concluded that the measures taken against the applicants were not disproportionate to the legitimate aim pursued and that the interference with the applicants' right to freedom of expression was necessary in a democratic society.

Concerning the newspaper

It appeared to the Court that Mr July was convicted because Libération had published a petition which reproduced extracts from the novel containing "particularly serious allegations" and offensive remarks, and whose signatories, repeating those allegations and remarks with approval, denied that the extracts were defamatory in spite of a finding to that effect against Mr Lindon and Mr Otchakovsky-Laurens.

The Court reiterated that protection of the right of journalists to impart information on issues of general interest required that they act in good faith and on an accurate factual basis and provide "reliable and precise" information in accordance with the ethics of journalism. Freedom of expression carried with it "duties and responsibilities", which also applied to the media even with respect to matters of serious public concern. Moreover, those "duties and responsibilities" were liable to assume significance when there was a question of attacking the reputation of a named individual and infringing the "rights of others". Thus, special grounds were required before the media could be dispensed from their ordinary obligation to verify factual statements that were defamatory of private individuals.

Having regard to the moderate nature of the fine and the damages that Mr July was ordered to pay, to the content of the passages and to the potential impact on the public of the remarks found to be defamatory on account of their publication by a national daily newspaper with a large circulation, the Court found that the interference was proportionate to the aim pursued. The Court concluded that the domestic court could reasonably find that the interference with the exercise by the applicant of his right to freedom of expression was necessary in a democratic society, in order to protect the reputation and rights of Mr Le Pen and the *Front National*.

There had therefore been no violation of Article 10 concerning any of the applicants.

In a (remarkable) dissenting opinion, three judges sharply disagree with the reasoning and findings of the majority of the Court. The dissenters are of the opinion that by seeking to ascertain the author's thoughts from the remarks of fictional characters in a fictional situation, the French Court of Appeal imprisoned literature in a set of rigid rules at odds with the freedom of artistic creation and expression. In their view such a radical position represents a clear departure from the case-law of the ECtHR, which has laid emphasis on the role of artistic creation in political debate. The dissenters also emphasize that by endorsing — or even paraphrasing — the reasoning given by the domestic courts, adhering to the logic they themselves adopted, the European Court in its judgment has quite simply refrained from carrying out its own review. The result is that European supervision is lacking, or is at best considerably limited, and this again represents a significant departure from the case-law of the ECtHR in matters of criticism of politicians. As regards Mr Jean-Marie Le Pen, it is argued by the dissenters that he should accept an even higher degree of tolerance being criticised precisely because he is a politician who is known for the virulence of his discourse and for his extremist views. It is clear in their view that the insulting allegations had a sufficient factual basis, as they could easily be derived from Mr J.-M. Le Pen's various convictions throughout his political career, particularly for the following offences: "trivialisation of crimes against humanity, making allowances for atrocities". The dissenters also believe that it is excessive and inaccurate to claim that the novel in question constitutes an appeal to violence or hatred. The work criticises a politician who is himself inclined to make comments of such a nature, as shown by the convictions pronounced against him. In the present case, the expressions "chief of a gang of killers" (p. 10) and "a vampire who thrives on the bitterness of his electorate, but sometimes also on their blood" (p. 136) cannot be taken literally; their intention is to convey the message that this politician, through his discourse, encourages his followers to engage in acts of extreme violence, especially against minorities, as the Bouaram case itself showed. In this sense, these expressions are also value judgments which have an established factual basis. Finally with regard the conviction of Serge July, the dissenters emphasize that it cannot be argued that, by simply reporting in the newspaper Libération on the support of 97 writers for Mathieu Lindon and by publishing their opinion that the impugned passages were not defamatory, July had failed in his duty to act in good faith.

ECtHR (Grand Chamber), Lindon, Otchakovsky-Laurens and July v. France, Applications nos. 21279/02 and 36448/02 of 22 October 2007

13. Voskuil v. the Netherlands, 22 November 2007 and Tillack v. Belgium, 27 November 2007 (protection of journalistic sources, investigative journalism)

In two judgments the ECtHR has given substantial protection to the journalists' protection of sources under Article 10 of the Convention. The case of *Voskuil v. the Netherlands* concerns Mr Voskuil's allegations that he was denied the right not to disclose his source for two articles he had written for the newspaper *Sp!ts* and that he was detained for more than two weeks in an attempt to compel him to do so. Voskuil had been summoned to appear as a witness for the defence in the appeal proceedings concerning three individuals accused of arms trafficking. The court ordered the journalist to reveal the identity of a source in the interests of those accused and the integrity of the police and judicial authorities. Voskuil invoked his right to remain silent (*zwijgrecht*) and subsequently, the court ordered his immediate detention. Only two weeks later the Court of Appeal decided to lift the order for the applicant's detention. It considered that the report published by the applicant was implausible and that the statement of Voskuil was no longer of any interest in the proceedings concerning the arms trafficking. In Strasbourg Voskuil complained of a violation of his right of freedom of expression and press freedom under Article 10 of the Convention. The European Court recalled that the protection of a journalist's sources is one of the basic conditions for freedom of the press, as reflected in various international instruments including the Council of Europe's Committee of Ministers Recommendation No. R (2000) 7. Without such

protection, sources might be deterred from assisting the press in informing the public on matters of public interest and, as a result, the vital public-watchdog role of the press might be undermined. The order to disclose a source can only be justified by an overriding requirement in the public interest. In essence the Court was struck by the lengths to which the Netherlands authorities had been prepared to go to learn the source's identity. Such far-reaching measures could but discourage those who had true and accurate information relating to wrongdoing from coming forward in the future and sharing their knowledge with the press. The Court found that the Government's interest in knowing the identity of the journalist's source had not been sufficient to override the journalist's interest in concealing it. There had therefore been a violation of Article 10.

The other case concerns the journalist H.M. Tillack complaining of a violation by the Belgian authorities of this right of protection of sources. Tillack, a journalist working in Brussels for the weekly magazine *Stern*, has been suspected of having bribed a civil servant by paying him EUR 8,000 in exchange for confidential information concerning investigations in progress in the European institutions. The European Anti-Fraud Office OLAF opened an investigation in order to identify the informant of Tillack. After the investigation by OLAF failed to unmask the official at the origin of the leaks, the Belgian judicial authorities were requested to open an investigation in this case regarding an alleged breach of professional confidence and bribery involving a civil servant. On 19 March 2004 Tillack's home and workplace were searched and almost all his working papers and tools were seized and placed under seal (16 crates of papers, two boxes of files, two computers, four mobile phones and a metal cabinet). Tillack lodged an application with the ECtHR, after the Belgian Supreme Court had rejected his complaint under Article 10 of the Convention. The European Court emphasized that a journalist's right not to reveal her or his sources could not be considered a mere privilege to be granted or taken away depending on the lawfulness or unlawfulness of their sources, but was part and parcel of the right to information, to be treated with the utmost caution, even more so in the applicant's case, where he had been under suspicion because of vague, uncorroborated rumours, as subsequently confirmed by the fact that he had not been charged. The Court also took into account the amount of property seized and considered that although the reasons given by the Belgian courts were "relevant", they could not be considered "sufficient" to justify the impugned searches. The European Court accordingly found that there had been a violation of Article 10 of the Convention.

ECtHR (third section), *Voskuil v. the Netherlands*, Application no. 64752/01 of 22 November 2007 and ECtHR (second section), *Tillack v. Belgium*, Application no. 20477/05 of 27 November 2007

14. Filatenko v. Russia, 6 December 2007 (defamation of political party and its leaders, political debate and electoral campaign, TV-journalist, live television show)

In 2000 the journalist Aleksandr Grigoryevich Filatenko was convicted for defamation. The reason for the defamation proceedings was a critical question he formulated during a broadcast live show he was presenting as a journalist working for Tyva, the regional state television and radio broadcasting company in the Tyva Republic of the Russian Federation. The controversial question, based on a question raised by a viewer by phone, referred to an incident during which the Tyva Republic flag had been torn off a car which was campaigning in support of the Otechestvo Party candidate in the neighbourhood of another political parties headquarter, the Edinstvo Movement. It was a matter of disagreement as to how Filatenko had worded that question during the programme. Defamation proceedings were brought against Filatenko and the broadcasting company by members of the Edinstvo Movement. The plaintiffs' version was that Filatenko had presented the incident as if the Tyva flag had been torn down and stamped on by people from the Edinstvo Campaign Headquarters. Filatenko denied having made any such allegation: he only admitted to having specified that the incident had taken place near the Edinstvo Campaign Headquarters. The Kyzyl District Court accepted the plaintiffs' version of how the question had been worded. As the video recording of the show had been lost, the district court relied solely on witness testimonies

confirming the plaintiff's version of Filatenko's wording of the question. Filatenko was found guilty of defamation and ordered to pay approximately EUR 347 compensation for damages, while Tyva was ordered to broadcast a rectification in the same time slot as the original show.

In a judgment of 6 December 2007 the European Court of Human Rights is of the opinion that this conviction and court order violated Article 10 of the European Convention on Human Rights. The Court reiterates that, as a general rule, any opinions and information aired during an electoral campaign should be considered part of a debate on questions of public interest and that there is little scope under Article 10 for restrictions on such debate. Similarly, punishing a journalist for having worded a question in a certain way, thus seriously hampering the press' contribution to a matter of public interest, should not be envisaged unless there is particularly strong justification. Therefore, the timing (just before elections) and format of the show (live and aimed at encouraging lively political debate), necessitated very good reasons for any kind of restriction on its participants' freedom of expression. The European Court finds that the Russian courts have failed to make an acceptable assessment of the relevant facts and have not given sufficient reasons for finding that Filatenko's wording of the question had been defamatory. Furthermore, there has been no indication that the assumed allegation contained in Filatenko's question had represented an attack on anyone's personal reputation. The Court is also of the opinion that there could be no serious doubts about Filatenko's good faith. He had merely requested a reaction from the show's participants on an event of major public concern, without making any affirmations. According to the European Court Filatenko could not be criticised for having failed to verify facts, given the obvious constraints of a live television show, while a representative of the Edinstvo political movement had been present and invited to respond to the question. The Court therefore concluded that the interference with Filatenko's freedom of expression had not been sufficiently justified, and hence violated Article 10 of the Convention.

ECtHR (First section), *Filatenko v. Russia*, Application no. 73219/01 of 6 December 2007

15. Stoll v. Switzerland, 10 December 2007 (breach of confidence, matter of public interest, journalistic ethics, diplomatic relations, good/bad faith of journalist, sensationalism)

In December 1996 the Swiss ambassador to the United States drew up a "strategic document", classified as "confidential", concerning the possible strategies with regard the compensations due to Holocaust victims for unclaimed assets deposited in Swiss banks. The report was sent to the Federal Department of Foreign Affairs in Berne and to a limited list of other persons. Martin Stoll, a journalist working for *Sonntags-Zeitung*, also obtained a copy of this document, probably as a result of a breach of professional confidence by one of the persons who had received a copy of this strategic paper. Short time later the *Sonntags-Zeitung* published two articles by Martin Stoll, accompanied by extracts from the document. The next days also other newspapers published extracts from the report. In 1999 Stoll was sentenced to a fine of 800 Swiss francs (520 euros) for publishing "official confidential deliberations" within the meaning of Article 293 of the Criminal Code. This provision not only punishes the person who is responsible for the breach of confidence of official secrets, but also those who helped as an accomplice to give publicity to such secrets. The Swiss Press Council, to which the case also had been referred in the meantime, found that the way Stoll had focussed on the confidential report, by shortening the analysis and failing to place the report sufficiently in context, had irresponsibly made some extracts appear sensational and shocking. In a judgment of 25 April 2006, the Strasbourg Court of Human Rights held, by four votes to three, that the conviction of Stoll was to be considered as a breach of the journalist's freedom of expression as guaranteed by Article 10 of the Human Rights' Convention. For the Court it was crucial that the information contained in the report manifestly raised matters of public interest, that the role of the media as critic and watchdog also applies to matters of foreign and financial policy and that the protection of

confidentiality of diplomatic relations, although a justified principle, could not be protected at any price. Furthermore, as Stoll had only been convicted because he published parts of the document in the newspaper, the European Court was of the opinion that the finding by the Swiss Press Council that he had neglected his professional ethics by focussing on some extracts in a sensationalist way, should not be taken into account to determine whether or not the publishing of the document was legitimate.

In a judgment of 10 December 2007 the Grand Chamber of the ECtHR has, by twelve votes to five, “overruled” this finding of a violation of Article 10. Although the Grand Chamber recognizes that the information contained in the ambassador’s paper concerned matters of public interest and that the articles of Stoll were published in a context of an important public, impassioned debate in Switzerland with an international dimension, it is of the opinion that the disclosure of the ambassador’s report was capable of undermining the climate of discretion necessary to the successful conduct of diplomatic relations and of having negative repercussions on the negotiations being conducted by Switzerland. The judgment underlines that the fact that Stoll did not act illegally himself by obtaining the leaked document is not necessarily a determining factor in assessing whether or not he complied with his duties and responsibilities: as a journalist he could not claim in good faith to be unaware that disclosure of the document in question was punishable under Article 293 of the Swiss Criminal Code. Finally the Court emphasizes that the impugned articles were written and presented in a sensationalist style, that they suggested inappropriately that the ambassador’s remarks were anti-Semitic, that they were of trivial nature and were also inaccurate and likely to mislead the reader. Like the Swiss Press Council, the Court observes a number of shortcomings in the form of the published articles. The Court comes to the conclusion that the *“truncated and reductive form of the articles in question, which was liable to mislead the reader as to the ambassador’s personality and abilities, considerably detracted from the importance of their contribution to the public debate”* and that there has been no violation of Article 10 of the Convention. The five dissenting judges express the opinion that the majority decision is a *“dangerous and unjustified departure from the Court’s well established case-law concerning the nature and vital importance of freedom of expression in democratic societies”*. The judgment of the Grand Chamber also contrasts remarkably with the principle enshrined in the 19 December 2006 Joint Declaration by the UN, OSCE, OAS and ACHPR according to which *“journalists should not be held liable for publishing classified or confidential information where they have not themselves committed a wrong in obtaining it”*.

ECtHR (Grand Chamber), *Stoll v. Switzerland*, Application no. 69698/01 of 10 December 2007

16. Guja v. Moldova, 12 February 2008 (protection of whistle blower, matter of public interest, conditions for protecting whistle blowing under Art. 10 Convention)

The ECtHR recently delivered a judgement on a very particular and interesting case, concerning the position of a “whistle-blower” who leaked two letters to the press and was subsequently dismissed. The Court held that the divulgence of the internal documents to the press was *in casu* protected by Article 10 of the Convention, which guarantees the right to freedom of expression, including the right to receive and impart information and ideas. The applicant, Mr. Guja, was Head of the Press Department of the Moldovan Prosecutor General’s Office, before he was dismissed, on the grounds that he had handed over two secret letters to a newspaper and that, before doing so, he had failed to consult the heads of other departments of the Prosecutor General’s Office, a behaviour which constituted a breach of the press department’s internal regulations. Guja was of the opinion that the letters were not confidential and that, as they revealed that the Deputy Speaker of Parliament, Vadim Mişin, had exercised undue pressure on the Public Prosecutor’s Office, he had acted in line with the President’s anti-corruption drive and with the intention of creating a positive image of the Office. Guja brought a civil action against the Prosecutor General’s Office

seeking reinstatement, but his request failed. Relying on Article 10 of the Convention, he complained to the Strasbourg Court about his dismissal.

The European Court held that, given the particular circumstances of the case, external reporting, even to a newspaper, could be justified, as the case concerned the pressure by a high-ranking politician on pending criminal cases. At the same time, the Public Prosecutor had given the impression that he had succumbed to political pressure. The Court also referred to the reports of international non-governmental organisations (the International Commission of Jurists, Freedom House, and the Open Justice Initiative), which had expressed concern about the breakdown of the separation of powers and the lack of judicial independence in Moldova. There is no doubt that these are very important matters in a democratic society, about which the public has a legitimate interest in being informed and which fall within the scope of political debate. The Court considered that the public interest in the provision of information on undue pressure and wrongdoing within the Prosecutor's Office is so important in a democratic society, that it outweighs the interest in maintaining public confidence in the Prosecutor General's Office. Open discussion of topics of public concern is essential to democracy and it is of great importance if members of the public are discouraged from voicing their opinions on such matters. The Court, being of the opinion that Guja had acted in good faith, finally noted that it was the heaviest sanction possible (dismissal) that had been imposed on the applicant. The sanction not only had negative repercussions on the applicant's career, but could also have a serious chilling effect on other employees from the Prosecutor's Office and discourage them from reporting any misconduct. Moreover, in view of the media coverage of the applicant's case, the sanction could also have a chilling effect on other civil servants and employees.

Being mindful of the importance of the right to freedom of expression on matters of general interest, of the right of civil servants and other employees to report illegal conduct and wrongdoing at their place of work, the duties and responsibilities of employees towards their employers and the right of employers to manage their staff, and having weighed up the other different interests involved in the applicant's case, the Court comes to the conclusion that the interference with the applicant's right to freedom of expression, in particular his right to impart information, was not "necessary in a democratic society". Accordingly, there has been a violation of Article 10 of the Convention.

ECTHR (Grand Chamber), *Guja v. Moldova*, Application no. 14277/04 of 12 February 2008

17. Yalçın Küçük (nr. 3) v. Turkey, 22 April 2008 (incitement to hatred and hostility, separatist propaganda, membership of armed group, terrorism, interview on TV, no incitement to violence or armed resistance)

Once more the European Court of Human Rights has found a breach of freedom of expression by the Turkish authorities. Yalçın Küçük, a university professor and a writer, was prosecuted on account of various speeches he gave and articles he wrote concerning the Kurdish question. In 1999, the Ankara State Security Court found him guilty of inciting hatred and hostility, of emitting separatist propaganda and of belonging to an armed group (art. 312 § 2 and art. 168 § 2 of the Criminal Code and art. 8 of the Antiterrorism Act nr. 3713). He was also convicted of assisting an armed group (art. 169 Criminal Code) on the basis of an interview for Med-TV in which Küçük had welcomed the PKK-leader Abdullah Öcalan as "Mister President" and had invited him to make a statement about the Kurdish question.

Küçük had to undergo a prison sentence of six years and six months and was ordered to pay a fine of EUR 1,300. Relying on Article 6 § 1 and Article 10 of the European Convention on Human Rights, he complained that the proceedings had been unfair and that his right to freedom of expression had been breached.

The European Court in its judgment of 22 April 2008 considered that the grounds adopted by the Turkish courts could not be regarded in themselves as sufficient to justify interference with Külçük's right to freedom of expression. While certain comments in the offending articles and speeches sought to justify separatism, which thus made them hostile in tone, taken as a whole they did not, however, advocate the use of violence, armed resistance or an uprising and did not constitute hate speech, which, in the Court's view, was the essential factor to be taken into consideration. One speech by Külçük, however, contained a sentence to be considered as incitement to violence and therefore could not invoke the protection guaranteed by Article 10 of the Convention.

The European Court, referring to the nature and the severity of the sanctions, found that Külçük's conviction as a whole had been disproportionate to the aims pursued and, accordingly, was not "necessary in a democratic society". The Court especially referred to the severity of the sentence of imprisonment for six years and six months. The Court held, unanimously, that there had been a violation of Article 10 and that it did not need to examine the complaints submitted under Article 6 of the Convention. It awarded Külçük EUR 3,000 in respect of non-pecuniary damage.

ECTHR (Fourth Section), *Yalçın Külçük (nr. 3) v. Turkey*, Application no. 71353/01 of 22 April 2008

18. Alithia Publishing Company Ltd. & Constantinides v. Cyprus, 22 May 2008 (defamation, journalistic ethics, malice, facts and value judgments, credibility and reliability of evidence, proof of allegations, accurate and reliable information)

This case concerns the complaint about defamation proceedings brought against Alithia Publishing Company Ltd, the publisher of the daily morning newspaper *Alithia* and its editor-in-chief, Alecos Constantinides. Both the publishing company and the editor-in-chief were found liable of defamation following the publication in *Alithia* of a series of articles which alleged that a former Minister of Defence, Mr Aloneftis, was corrupt. According to final judgment by the Supreme Court the articles not only imputed to Mr Aloneftis the commission of criminal offences but had disparaged his moral character by presenting him as an unscrupulous criminal driven purely by self-interest. The lack of supporting evidence and the seriousness of the defamatory allegations demonstrated the existence of malice on the part of the applicants as well as their intent to defame the former Minister. The facts on which the publications had been based were considered inaccurate and the defendants were considered to have acted in flagrant disregard of the requirement to verify the factual allegations they had published. The Supreme Court upheld the district court's judgment and the corresponding award of damages.

The European Court in its judgment of 22 May 2008 noted that the Cypriot courts had made a carefully balanced examination of the case against the applicants and had concluded that the applicants had not sufficiently proven their primarily factual allegations. Indeed, the domestic courts had found that the applicants had acted maliciously and had blatantly disregarded the principles of responsible journalism. The Court found those findings persuasive in the circumstances and therefore held unanimously that there had been no violation of Article 10.

The Court notes that the domestic courts' imposition of a requirement on the press to act in good faith in order to provide accurate and reliable information is implicit in the protection of Article 10 of the Convention. This would equally apply in respect of reports on matters of public interest, even where such reports deal with the conduct of senior public officials acting in their official capacity. According to the European Court the district court of the defendant state conducted an extensive analysis of the applicants' evidence and concluded that the applicants had not in fact made sufficient effort to investigate the matters they alleged in their reports or to obtain and present the plaintiff's position on the relevant allegations. It is held crucial in this regard that the evidence of the applicants was dismissed as unreliable and that

both the district court and the Supreme Court agreed that the applicants had acted maliciously. The ECtHR does not see any reason to depart in this respect from the well-reasoned findings of the domestic courts, "which are, in any event, better placed to assess the credibility and reliability of the applicants' evidence". Given the lack of good faith on the part of the applicants, the ECtHR does not find it necessary to examine whether there were any special grounds in the present case for dispensing the applicants from their ordinary obligation to verify factual statements that were defamatory of private individuals or, indeed, public officials. The Court also considers that it is not, in principle, incompatible with Article 10 to place on a defendant in libel proceedings who wishes to rely on the defence of justification the onus of proving to the civil standard the truth of defamatory statements.

ECtHR (First Section), *Alithia Publishing Company Ltd. & Constantinides v. Cyprus*, Application no. 17550/03 of 22 May 2008

19. Meltex Ltd. and Mesrop Movsesyan v. Armenia, 17 June 2008 (granting of broadcasting licences, decisions taken by the regulatory authorities must be duly reasoned, guarantees against arbitrariness)

In this case the European Court of Human Rights held unanimously that the refusal by the Armenian authorities on seven several occasions to grant the Meltex television company's requests for broadcasting licences, amounted to a violation of Article 10 of the European Convention on Human Rights. The Court firstly recognised that the independent broadcasting company Meltex was to be considered as a 'victim' of an interference in its freedom of expression by the Armenian public authorities: by not recognising the applicant company as the winner in the calls for tenders it competed in, the NTRC (*National Radio and Television Commission*) effectively refused the applicant company's bids for a broadcasting licence and such refusals do indeed constitute interferences with the applicant company's freedom to impart information and ideas. The Court also made clear that States howsoever are permitted to regulate by means of a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects and the grant of a licence may also be made conditional on such matters as the nature and objectives of a proposed station, its potential audience at national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments. The compatibility of such interferences must be assessed in the light of the requirements of paragraph 2 of Article 10 of the Convention, which means *inter alia* that the interference must be prescribed by law in a way that guarantees protection against arbitrary interferences by public authorities. Indeed, the manner in which the licensing criteria are applied in the licensing process must provide sufficient guarantees against arbitrariness, including the proper reasoning by the licensing authority of its decisions denying a broadcasting licence (see also ECtHR 11 October 2007, *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, IRIS 2008-1, 3).

The Court noted that the NTRC's decisions had been based on the Broadcasting Act (2000) and other complementary legal acts, defining precise criteria for the NTRC to make its choice, such as the applicant company's finances and technical resources, its staff's experience and whether it produced predominately in-house, Armenian programmes. However, the Broadcasting Act did not explicitly require at that time that the licensing body should give reasons when applying those criteria. Therefore, the NTRC has simply announced the winning company without giving any reasons why that company had met the requisite criteria and why Meltex had not. There was no way of knowing on what basis the NTRC had exercised its discretion to refuse a licence. In this connection, the Court noted that the guidelines adopted by the Committee of Ministers of the Council of Europe in the broadcasting regulation domain call for open and transparent application of the regulations governing the licensing procedure and specifically recommend that "all decisions taken ... by the regulatory authorities ... be ... duly reasoned" (Rec. (2000)23. See also Declaration of the Committee of Ministers of 26 March 2008 on the independence and functions of regulatory

authorities for the broadcasting sector). The Court further took note of the relevant conclusions reached by the PACE in its Resolution of 27 January 2004 concerning Armenia, where it stated that “the vagueness of the law in force had resulted in the NTRC being given outright discretionary powers”. The Court considered that a licensing procedure whereby the licensing authority gives no reasons for its decisions does not provide adequate protection against arbitrary interferences by a public authority with the fundamental right to freedom of expression. The Court therefore concluded that the interference with Meltex’ freedom to impart information and ideas, namely the seven denials of a broadcasting licence, had not met the requirement of lawfulness under the European Convention and hence violated Article 10 of the Convention.

ECtHR (Third Section), *Meltex Ltd. and Mesrop Movsesyan v. Armenia*, Application no. 32283/04 of 17 June 2008

20. Flux (nr. 6) v. Moldova, 29 July 2008 (allegations of corruption, defamation, presumption of innocence, journalistic ethics, lack of journalistic investigation, right of reply, unprofessional behaviour of newspaper)

After several successful complaints before the Strasbourg Court of Human Rights related to freedom of critical journalistic reporting, this time the European Court by four votes to three came to the conclusion that the conviction of the Moldovan newspaper *Flux* was not to be considered as a violation of Article 10 of the Convention. The approach of the majority of the Court regarding the (lack of) journalistic ethical quality of the litigious articles published by *Flux* is strikingly different than the one of the dissenting judges.

In 2003 *Flux* published an article about a High School in Chisinau, sharply criticising its principal. The article merely quoted an anonymous letter it had received from a group of students' parents. The letter alleged *inter alia* that the school's principal used the school's funds for inappropriate purposes and that he had received bribes of up to 500 US dollars for enrolling children in the school. *Flux* refused short time later to publish a reply from the school's principal. The text of the reply was then published in another newspaper, the *Jurnal de Chisinau*. The reply expressed that *Flux* had published an anonymous letter without even visiting the school or conducting any form of investigation, which showed that its aim was purely sensationalism. It was said that *Flux* had acted contrary to journalistic ethics. *Flux* reacted to this reply by publishing a new article, repeating some of the criticism published in the first article and arguing that *Flux* would certainly find persons willing to testify in front of a court about the bribes. The principal then brought civil proceedings for defamation against *Flux* and the district court has found the allegations of bribery to be untrue and defamatory. The court stated that it had no reason to believe the three witnesses who had testified in court that bribes were taken for the enrolment of children in the school. The district court expressed the opinion that “*to be able to declare publicly that someone is accepting bribes, there is a need for a criminal-court decision finding that person guilty of bribery*”. Since there was no such finding against the principal, he should not have been accused of bribery, according to the Moldovan district court. The judgment of the district court was confirmed by the Court of Appeal of Chisinau and the appeal with the Supreme Court of Justice was dismissed. The newspaper was ordered to issue an apology and to pay the principal 1,350 Moldovan Lei (MDL), the equivalent of 88 euros (EUR) at the time.

Flux complained in Strasbourg under Article 10 of the Convention that the Moldovan courts' decisions had entailed interference with its right to freedom of expression that could not be regarded as necessary in a democratic society. The European Court in its judgment of 29 July 2008 attaches major importance to the fact that despite the seriousness of the accusations of bribery the journalist of *Flux* who wrote the article made no attempt to contact the principal to ask his opinion on the matter nor conducted any form of investigation into the matters mentioned in the anonymous letter. Furthermore a right of reply by the principal was refused by *Flux*, although the language used in this reply was not offensive. The new article in *Flux* as a reaction on the reply published in *Jurnal de Chisinau* is regarded by the Court as

a form of reprisal for questioning the newspaper's professionalism. The Court underlines however that it does not accept the reasoning of the district court, namely that the allegations of serious misconduct levelled against the principal of the school should have first been proved in criminal proceedings. But the Court also makes clear that the right to freedom of expression cannot be taken to confer on newspapers an absolute right to act in an irresponsible manner by charging individuals with criminal acts in the absence of a basis in fact at the material time and without offering them the possibility to counter the accusations. As there are limits to the right to impart information to the public, a balance must be struck between that right and the rights of those injured, including the right to be presumed innocent of any criminal offence until proven guilty. The Court also refers to the unprofessional behaviour of the newspaper and the relatively modest award of damages which it was required to pay in the context of a civil action and finds that the solution of the domestic courts struck a fair balance between the competing interests involved. The Court comes to the conclusion that the newspaper acted in flagrant disregard of the duties of responsible journalism and thus undermined the Convention rights of others, while the interference with the exercise of its right to freedom of expression was justified. On these grounds, the Court held by four votes to three that there has been no violation of Article 10 of the Convention.

The three dissenting judges in their joint dissenting opinion make clear however that they voted without hesitation in favour of a finding of a violation of Article 10. They argue that in this case the Court attached more value to professional behaviour of journalists than to the unveiling of corruption. According to the dissenters the facts show that the newspaper made enquiries about persistent rumours, found three witnesses whose integrity has not been put in doubt and who supported the allegations of corruption on oath. The dissenters underline that the Court has penalised the newspaper not for publishing untruths but for so-called 'unprofessional behaviour'. The dissenting opinions express the fear that this judgment of the Court has thrown the protection of freedom of expression as far back as it possibly could. And the dissenters continue : *“Even if alarming facts are sufficiently borne out by evidence, in the balancing exercise to establish proportionality, disregard for professional norms is deemed by Strasbourg to be more serious than the suppression of democratic debate on public corruption. To put it differently, in the Court's view the social need to fight poor journalism is more pressing than that of fighting rich corruption. The 'chilling effect' of sanctions against press freedom dreaded by the Court's old case-law has materialised through the Court's new one. (..) The serious inference of this judgment is that freedom of expression also ceases to exist when it is punished for pushing forward for public debate allegations of public criminality made by witnesses certified as credible but in a manner considered unprofessional. When subservience to professional good practice becomes more overriding than the search for truth itself it is a sad day for freedom of expression”.*

ECtHR (Fourth Section), Flux (nr. 6) v. Moldova, Application no. 22824/04 of 29 July 2008