ARTICLE 10
Freedom of expression

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

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

ECHR, on the relationship between the third sentence of Article 10 §1 ("this Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises") and 10 §2:

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

- *Informationsverein Lentia and Others v. Austria,* judgment of 24 November 1993, Series A No. 276, §32.

According to the ECHR, a judicial decision preventing a person from receiving transmissions from telecommunications satellites may be considered as form

of interference with the right to freedom of expression → Khurshid Mustafa and Tarzibachi v. Sweden, Judgment of 16.3.2009, § 32:

"…32. The Court reiterates, further, that Article 10 applies to judicial decisions preventing a person from receiving transmissions from telecommunications satellites (see Autronic AG v. Switzerland, 22 May 1990, §§ 47-48, Series A no. 178). Moreover, the genuine and effective exercise of freedom of expression under Article 10 may require positive measures of protection, even in the sphere of relations between individuals (see Özgür Gündem v. Turkey, no. 23144/93, §§ 42-46, ECHR 2000-III; Fuentes Bobo v. Spain, no. 39293/98, § 38, 29 February 2000; and Appleby and Others v. the United Kingdom, no. 44306/98, § 39, ECHR 2003-VI)".

"Prescribed by Law":

A norm cannot be regarded as a "law" unless it is formulated with sufficient precision to enable the citizen to regulate his or her conduct and that he or she must be able – if need be with appropriate advice – **to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.** However, it went on to state that these consequences do not need to be foreseeable with absolute certainty, as experience showed that to be unattainable (Perinçek v. Switzerland [GC], § 131).

"Necessary in a democratic society":

→ "a pressing social need"

A pressing social need is not synonymous with "indispensable", but neither has it the flexibility of such expressions as **"admissible", "ordinary", "useful", "reasonable" or "desirable"** (Gorzelik and Others v. Poland [GC], § 95; Barthold v. Germany, § 55; The Sunday Times v. the United Kingdom (no. 1), § 59).

While the Contracting States have **a certain margin of appreciation** in assessing whether such a need exists, **where freedom of the press is at stake this margin of appreciation is in principle restricted** (Dammann v. Switzerland, § 51).

→ Assessment of the nature and severity of the sanctions

The Court is particularly attentive to the "censorship" aspect of an interference and must be satisfied that the penalty **does not amount to a form of censorship intended to discourage the press from expressing criticism** (Bédat v. Switzerland [GC], § 79).

In order for a measure to be considered proportionate and necessary in a democratic society, there must be no other means of achieving the same end that would interfere less seriously with the fundamental right concerned (Glor v. Switzerland, § 94) **["The least restrictive measure"].**

The quality of the parliamentary and judicial review of the necessity of the measure is of particular importance in this respect, including to the operation of the relevant margin of appreciation. It follows that the more convincing the general justifications for the general measure are, the less importance the Court will attach to its impact in the particular case (Animal Defenders International v. the United Kingdom [GC], §§ 108-109) **[General measures].**

→ Requirement of relevant and sufficient reasons

(The Court has held in numerous cases that) **a lack of relevant and sufficient reasoning** on the part of the national courts or a failure to consider the applicable standards in assessing the interference in question will entail a violation of Article 10 (see, *inter alia,* Uj v. Hungary, §§ 25-26; Sapan v. Turkey, §§ 35-41; Gözel and Özer v. Turkey, § 58; Scharsach and News Verlagsgesellschaft v. Austria, § 46; Cheltsova v. Russia, § 100; Mariya Alekhina and Others v. Russia, § 264).

In general:

"Where there has been an interference in the exercise of the rights and freedoms guaranteed in paragraph 1 of Article 10, the supervision must be strict, because of the importance of the rights in question; the importance of these rights has been stressed by the Court many times. The necessity for restricting them must be **convincingly established...".**

Autronic AG* v. *Switzerland, judgment of 22 May 1990, Series A No. 178, § 61;
Worm v. Austria, judgment of 29 August 1997, Reports 1997-V, § 47.

ECHR on the Internet as form of communication

The Court has noted on several occasions that user-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression (Delfi AS v. Estonia [GC], § 110; Cengiz and Others v. Turkey, § 52), holding that, **in view of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information generally** (Delfi AS v. Estonia [GC], § 133; Times Newspapers Ltd v. the United Kingdom (no. 1 and no. 2), § 27).

Accordingly, the Court considers that **the blocking of access to the Internet may be in direct conflict with the actual wording of paragraph 1 of Article 10 of the Convention**, according to which the rights set forth in that Article are secured **"regardless of frontiers"** (Ahmet Yıldırım v. Turkey, § 67).

Furthermore, the Court has observed that an increasing amount of services and information **is available only *via* the Internet** (Jankovskis v. Lithuania, § 49; Kalda v. Estonia, § 52) and that political content ignored by the traditional media is often shared

via the Internet (in this particular case, via YouTube), thus fostering the emergence of citizen journalism (Cengiz and Others v. Turkey, § 52).

With regard to the material scope of Article 10 of the Convention, the Court has emphasised that **this provision is to apply to communication on the Internet**, whatever the type of message being conveyed and even when the purpose is profit-making in nature (Ashby Donald and Others v. France, § 34).

In particular, it considers that the following spheres are covered by the exercice of the right to freedom of expression:

→ the maintenance of Internet archives in so far as they represent a critical aspect of the role played by Internet sites (Times Newspapers Ltd v. the United Kingdom (no. 1 and no. 2), § 27; M.L. and W.W. v. Germany; Węgrzynowski and Smolczewski v. Poland);

→ the publication of photographs on an Internet site specialising in fashion and offering photos and videos of fashion shows on a free or pay-to-view basis (Ashby Donald and Others v. France, § 34);

→ the fact of a political party making available a mobile application allowing voters to share anonymous photographs of their invalid ballot papers and comments on their reasons for voting in this way (Magyar Kétfarkú Kutya Párt v. Hungary [GC], § 91);

→ the use of certain sites allowing information to be shared, in particular YouTube, a video-hosting website on which users can upload, view and share videos (Cengiz and Others v. Turkey, § 52), and Google Sites, a Google service designed to facilitate the creation and sharing of websites within a group (Ahmet Yıldırım v. Turkey,§ 49).

The Court has reiterated that, having regard to the role the Internet plays in the context of professional media activities and its importance for the exercise of the right to freedom of expression generally, the absence of a sufficient legal framework at the domestic level allowing journalists to use information obtained from the Internet without fear of incurring sanctions seriously hinders the exercise of the vital function of the press as a "public watchdog". In the Court's view, the complete exclusion of such information from the field of application of the legislative guarantees of journalists' freedom may itself give rise to an unjustified interference with press freedom under Article 10 of the Convention (Editorial Board of Pravoye Delo and Shtekel v. Ukraine, § 64; Magyar Jeti Zrt v. Hungary, § 60).

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Recommendation of the Committee of Ministers to member States on a Guide to human rights for Internet users (Adopted by the Committee of Ministers on 16 April 2014 at the 1197th meeting of the Ministers' Deputies)

1. Council of Europe member States have the obligation to secure for everyone within their jurisdiction the human rights and fundamental freedoms enshrined in the European Convention on Human Rights (ETS No. 5, the Convention). **This obligation is also valid in the context of Internet use.** Other Council of Europe conventions and instruments, which deal with the protection of the right to freedom of expression, access to information, the right to freedom of assembly, **protection from cybercrime and of the right to private life** and to the protection of personal data, are also applicable.

2. **The obligations of States to respect, protect and promote human rights include the oversight of private companies. Human rights, which are universal and indivisible, and related standards, prevail over the general terms and conditions imposed on Internet users by any private sector actor.**

3. **The Internet has a public service value.** People, communities, public authorities and private entities rely on the Internet for their activities and have a legitimate expectation that its services are accessible, provided without discrimination, affordable, secure, reliable and ongoing. Furthermore, **no one should be subjected to unlawful, unnecessary or disproportionate interference with the exercise of their human rights and fundamental freedoms when using the Internet.**

4. **Users should receive support** to understand and effectively exercise their human rights online when their rights and freedoms have been restricted or interfered with. This support should include guidance on access to effective remedies. In light of the opportunities that the Internet provides for transparency and accountability in the conduct of public affairs, **users should be empowered to use the Internet to participate in democratic life.**

5. To ensure that existing human rights and fundamental freedoms **apply equally offline and online, the Committee of Ministers recommends** under the terms of Article 15.b of the Statute of the Council of Europe that member States:

5.1. actively **promote the Guide to human rights for Internet users,** as set out in the Appendix, among citizens, public authorities and private sector actors and take specific action regarding its application in order to enable users to fully exercise their human rights and fundamental freedoms online;

5.2. assess, regularly review and, as appropriate, remove restrictions regarding the exercise of rights and freedoms on the Internet, especially when they are not in conformity with the Convention in the light of the relevant case law of the European Court of Human Rights. **Any restriction must be prescribed by law, necessary in a democratic society to pursue a legitimate aim and proportionate to the legitimate aim pursued;**

5.3. ensure that Internet users **have access to effective remedies** when their rights and freedoms have been restricted or when they believe that their rights have been violated. This requires enhancing co-ordination and co-operation among relevant institutions, entities and communities. It also necessitates the engagement of and effective co-operation with private sector actors and civil society organisations. Depending on the national context, this may include redress mechanisms such as those provided by data protection authorities, national human rights institutions (such as ombudspersons), court procedures and hotlines;

5.4. promote co-ordination with other State and non-State actors, within and beyond the Council of Europe, with regard to the standards and procedures which have an impact on the protection of human rights and fundamental freedoms on the Internet;

5.5. **encourage the private sector to engage in genuine dialogue with relevant State authorities and civil society in the exercise of their corporate social responsibility, in particular their transparency and accountability,** in line with the "Guiding Principles on Business and Human Rights: implementing the United Nations 'Protect, Respect and Remedy' Framework". The private sector should also be encouraged to contribute to the dissemination of the guide;

5.6. **encourage civil society to support the dissemination and application of the guide so that it provides an effective tool for Internet users.**

UN HUMAN RIGHTS COUNCIL A/HRC/47/L.22: The promotion, protection and enjoyment of human rights on the Internet

A resolution – led by a core group of Brazil, Nigeria, Sweden, Tunisia and the United States, and co-sponsored by 70 countries from all regions – that was adopted by a vote with strong support at the Council on 13 July 2021. This is now the fifth in a series of resolutions with the same title, the first of which was adopted in 2012.