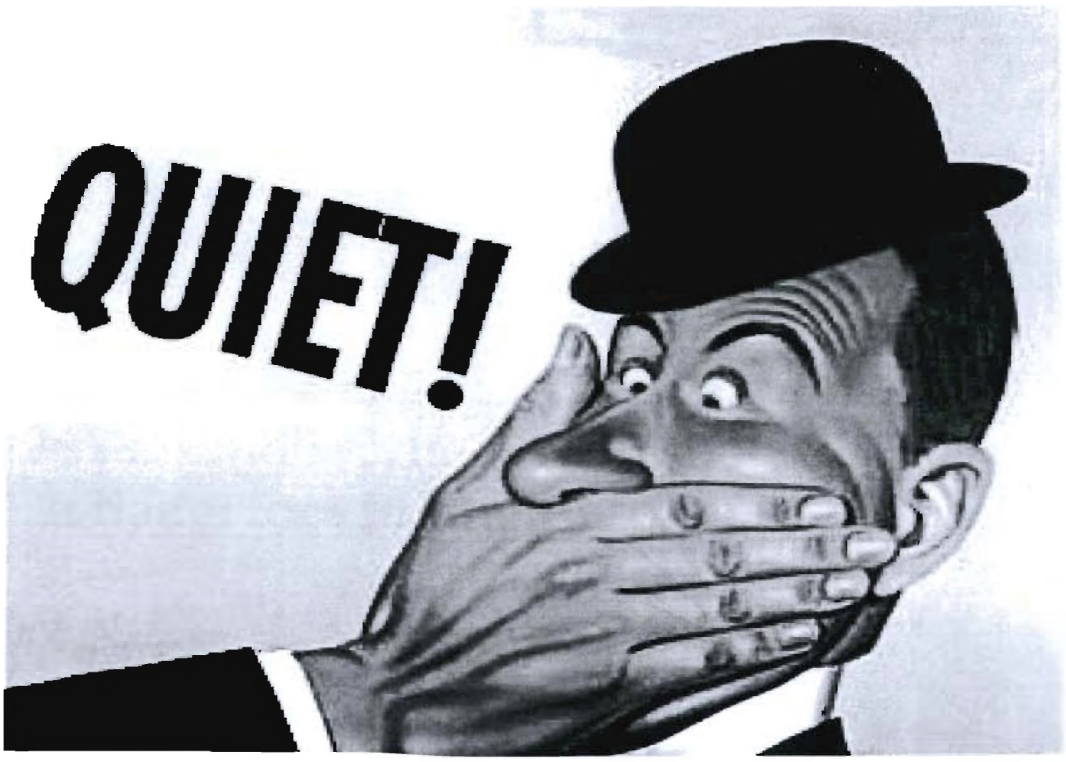
PANTEION UNIVERSITY OF SOCIAL AND POLITICAL SCIENCES
M.A. IN EUROPEAN LAW AND PUBLIC POLICY
SUPERVISOR: MR. PERRAKIS
MAGDALINI KONIDARI

Freedom of expression under article 10 of the ECHR; a basic tool for the European legal order



ATHENS - PARIS, 2012

Because one's work is the result of more people facilitating it, I would like to spend a few lines in order to acknowledge it.

I would like to thank my parents for their support,

my sister for her being who she is,

and lastly my supervisor Mr. Perrakis and the other Professors both in Panteion University of Athens and in the Institut d'Etudes Politiques de Paris who guided me throughout these two years.

"Je ne suis pas d'accord avec ce que vous dites, mais je me battrai pour que vous ayez le droit de le dire."

Voltaire

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Abbreviations

EC European Communities

ECHR European Convention on Human Rights

ECJ European Court of Justice, now CJEU Court of Justice of the European Union

ECSC European Coal and Steel Community

ECtHR European Court of Human Rights

TEU Treaty on European Union

TEU(M) Treaty on European Union (Maastricht)

TFEU Treaty on the Functioning of the European Union

Introduction

"The European Convention on Human Rights is the most important form of expression of the attachment of the member states of the Council of Europe to the values of democracy, of peace and justice, and, through them, to the respect of the fundamental rights and freedoms of the individuals living in these societies."[1]

The Convention for the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention on Human Rights (ECHR), was signed in Rome in 4 November 1950. It entered into force on September 3rd, 1953 upon the fulfilment of the condition of at least 10 ratifications[2].

This paper analyzes one of the main fundamental freedoms of the ECHR, the freedom of expression as it is laid down in article 10, which text reads as follows:[3]

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 as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in

[1] Introduction to European Convention on Human Rights, Human Rights Information Centre – Collected texts, Council of Europe, 1994

[2] http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG, last visit: 19/12/2011.

[3] http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-/0/ENG_CONV.pdf, last visit: 19/12/2011.

> confidence, or for maintaining the authority and impartiality of the judiciary.

In the first part, we will analyse the evolution of human rights in the EU legal order through a historical perspective, that means from the "false human rights" till the Charter of Fundamental Rights of the EU with -finally- a binding effect.

Moreover, we well scrutinize the topic of the accession of the EU to the ECHR. Again in a historical order, from the negative Opinion of the ECJ till the *expressis veribis* provision with the Lisbon Treaty which allows the accession. We will also evaluate the motivations and the necessity for this accession as well as the obligations that will derive from the new membership.

In the second part, we will examine the different aspects of this fundamental freedom in a theoretical level, adopting a word interpretation method as this is already pursued, along with the restrictions that are imposed on the freedom of expression.

This theoretical analysis will be supported by the jurisprudence in the third part, divided into different categories, such as the protection of the general interest, the rights of other or the media. Special reference is made for Turkey which lies on the top of the ranking concerning violations in general and violations regarding the freedom of expression more specifically. The better perception we come to have under the light of the case law, as this is deployed in the European Court of Human Rights (ECtHR or the Court) derives from the fact that "ECHR functions under the common law system."[4] In other words, the necessity to underline the cases where the Court ruled upon (a violation or not of) the freedom of expression generates a *stare decisis* for the national courts of the member states, namely a rule of precedence by which they should abide.[5]

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[4] Monica Macovei, Freedom of Expression, A guide to the implementation of Article 10 of the European Convention on Human Rights, Human rights handbooks, No. 2, pg. 5.

[5] This is also supported by the fact that with the new procedure before the ECtHR, a case in order to be admissible, it needs to fulfil certain strict admissibility requirements (Article 35 of the ECHR), among which a case should not be substantially similar to a previous case. The admissibility criteria lead to approximately 98% of the cases to be inadmissible.

Finally, we will make some conclusions and we will cite our bibliography and our main supporting documents, knowing that this is a vast subject which will keep evolving and needs to be closely and continually observed.

Part I

Human Rights within the EU legal order

a) Human Rights in the EU

The protection of human rights in the European legal order is a two-fold one. It consists of the supranational European Union legal order and the intergovernmental European Convention of Human Rights.
As regards the EU legal order, historically, there was no reference to the human rights within the European Economic Community Treaty or the European Coal and Steal Community Treaty. The only mentioning was of some called "false"[6] fundamental rights such as the free movement or the non-discrimination on the ground of nationality or gender. There are many explanations for this absence that could be taken into consideration; First of all, it was not necessary to invoke them in economically-oriented treaties, since no one would see the connection between economic objectives and fundamental rights.[7] Secondly, it would not be useful due to the existence of national Constitutions, where they suffice in the light of human rights. At that time there was no primacy of EU law yet. Thirdly, they were even regarded as dangerous. Based on observations concerning the amendment of the U.S. Constitution that led to the Bill of Rights, the Supreme Court had gained space to act legislately on a field which was normally regulated by the State.[8] Then there was the revolt of the German[9] and Italian constitutional courts, according to which Germans and Italians could not surrender to an

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[6] Notes from the course "The protection of human rights in Europe", Antoine Bailleux, Institut d'Etudes Politiques de Paris, 2011-2012.

[7] Charles F. Sabel and Oliver Gerstenberg, Constitutionalising an Overlapping Consensus: The ECJ and the Emergence of a Coordinate Constitutional Order, European Law Journal, Vol. 16, No. 5, September 2010, pg. 514.

[8] The so called "Hamilton Argument".

[9] BverfGE, 29 May 1974, Solange I: "as long as the integration process has not progressed so far that Community law also receives a catalogue of fundamental rights decided on by a parliament and of settled validity, which is adequate in comparison with the catalogue of fundamental rights contained in the Constitution, a reference by a court in ... Germany to the Bundesverfassungsgericht in judicial review proceedings ... is admissible and necessary if the German court regards the rule of Community law which is relevant to its decision as inapplicable ... because and insofar as it conflicts with one of the fundamental rights in the Constitution".

organization that did not respect human rights because the German and the Italian Constitutions respectively respected them. Otherwise, they would have infringed their own Constitution, unless there was an equal level of human rights' protection.

Therefore, so long as the European Communities at that time did not have a system of human rights' protection equivalent to the same level of protection of human rights within their Constitution, the national courts would continue to review secondary EC legislation in view of human rights.

Then[10], there was a slow recognition of human rights in the Treaties. In fact, there was a catalogue of human rights at an EU level on a case by case basis. These were defined as the general principles of EU law. In other words, what constituted the constitutional traditions common to the Member States could be regarded by the ECJ as general principles of the Union law. Hence, the human rights "entered" the preamble of the Single European Act, gaining subsequently a better place with the Maastricht Treaty, as general principles of EU law, confirming the traditions of the Member States. Nonetheless, there was no right attributed to the ECJ to review anything on the grounds of the human rights, a factor that did not emerge as an obstacle for the ECJ to carry on anyways.

Consequently, the sources of fundamental rights according to article 6[11] of the Treaty of the European Union are the Charter of Fundamental Rights of the European Union, the ECHR and the general principles.

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[10] Case 11/70 Internationale Handelsgesellschaft, 17 December 1970: "In fact, respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the member states, must be ensured within the framework of the structure and objectives of the community".

[11] 1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties. The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

The general principles of EU law contain on the one hand, the constitutional traditions entrenched and common to the Member States. On the other hand, within the content of general principles, the international treaties for the protection of human rights, on which the member states have signed, are included.

Another source of EU law is the Charter. With the Lisbon Treaty of 2009, the Charter is not included in the main body of the Treaty as it was with the Constitutional Treaty of 2004. However, article 6 TEU gives Charter binding effect and in the end same status as the Treaties, therefore Charter constitutes primary law.

The Charter of the EU rights maintains a restatement of the *acquis communautaire* along with some innovations, such as the social rights, which constituted a crucial reason for the denial of the UK to the Charter. It contains a cross-cutting limitation clause in article 52 par. 1, according to which: "Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others". It has also a limited scope as stated in article 51 par. 1[12], i.e. it is implemented when EU law applies. The level of protection of the Charter is defined in article 53, where "Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law

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2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

[12] According to which: "The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union … and to the Member States only when they are implementing Union law".

and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions." That means that the Charter may not be used in order to go below the level of protection granted by the Charter and EU law. It may go above and the ECJ gives may grant a better protection. The ECJ has in fact admitted this principle but not really applied it.

The position and role of fundamental rights in the EU legal order pose some uncertainty since they are primary law; however, they have a flavour of "supra-constitutional status" as it was showcased in the Kadi issue.[13] In that case, human rights seemed to be placed above others. Art. 307 of the EC Treaty allowed Member States to deviate from their obligation of EU law in order to satisfy obligations that were made prior to the accession to the EU. Thus, the resolution of the United Nations challenged human rights and it was forced because the contracting parties were members of the UN before the accession to the EU. However, the ECJ ruled article 307 EC may in no circumstances permit any challenge to the principles that form part of the very foundations of the Community legal order, one of which is the protection of fundamental rights. Hence, human rights were granted greater value than article 307 EC. An element of hierarchy existing inside the EU.

The interpretive tools of the Charter, apart from the Constitutional traditions and the Explanations[14] as laid down in its last articles[15] is the ECHR: "In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection." It should be noted here, that there is also a

[13] Kadi, C-402 and 415/05: "Article 307 EC may in no circumstances permit any challenge to the principles that form part of the very foundations of the Community legal order, one of which is the protection of fundamental rights, including the review by the Community judicature of the lawfulness of Community measures as regards their consistency with those fundamental rights."

[14] Article 52 par. 1 and 2 of the Charter.

[15] Article 52 par. 3 of the Charter.

contravening opinion, according to which the article 52 does not refer to the ECHR, meaning that the case-law of the EU will not obliged to abide by the former.[16]

When it comes to the freedom of expression which is identical to the one cited in the ECHR, the former is laid down in article 11 of the Charter[17], according to which: "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. 2. The freedom and pluralism of the media shall be respected."

As cited in the Explanations[18]: "Article 11 corresponds to Article 10 of the European Convention on Human Rights, which reads as follows...Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which Community competition law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR."

[16] Tobias Lock, The ECJ and the ECtHR: The Future Relationship between the Two European Courts, The Law and Practice of International Courts and Tribunals, Vol. 8, pp. 375–398, 2009.

[17] Freedom of expression and information.

[18] Article 11 of the Explanations.

b) EU accession to the ECHR

i) Negative Opinion of the ECJ - Remarks

The issue of the EU accession to the ECHR is not a new one. The European Parliament had repeatedly expressed in favor of the EU accession to the ECHR[19]. Fundamental rights are the basis of this future-to-be membership because they form an integral part of the general principles of law, which are guaranteed by the ECJ. However, in 1996, the European Court of Justice delivered a negative Opinion[20] about the "accession to the ECHR".
The Court received a request for an opinion, which was filed in this April 26, 1994 and delivered by the Council of the European Union under article 228 of the EC Treaty, which states: "The Council, the Commission or a Member State may request the opinion of the Court of Justice on the compatibility of the proposed agreement with the above provisions of the Treaty. The agreement has led to a negative opinion of Justice can not come into force under the conditions laid down in Article 14 of the EU Treaty. "
In this opinion, the Court held that although the fundamental rights are a basic condition for the legality of EU rules, the Community's accession to the ECHR would constitute a radical change in the regime of protection of human rights with the affecting the institutional dimension of matter. The explicit lack of jurisdiction did not create the precedence for the Community at that stage to make such a step. Given the constitutional nature, such a reform should be undertaken by the Community legislator revisionist. This opinion had a positive feedback as a discreet, careful and clear response within a very important issue.[21]

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[19] Resolution 1068 of 1995 on the accession of the European Community to the European Convention on Human Rights, http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta95/eres1068.htm, last visit: 10/5/2012.

[20] Opinion 2/94, 28 March 1996.

[21] J. H. H. WEILER and N. LOCKHART "Taking Rights Seriously" Seriously: the European Court and its Fundamental Rights Jurisprudence", CMLR, Vol. 32, (1995), Parts I & II as in

Despite the international legal personality being attributed to the EU, it was a prerequisite to have a provision in the Treaty about the accession of the EU to the ECHR (article 6 paragraph 2 TEU) and the annexation of a specific protocol to the Lisbon Treaty, which *inter alia* states that the accession agreement "must ensures that EU accession does not affect the powers of this and its institutions". In accordance to that, a specific clause was encapsulated in article 188 par. 8 of the Treaty of the Functioning of the European Union for membership. According to the latter, the Council shall decide unanimously in order to conclude the agreement which "shall enter into force after the approval by the Member States according to their respective constitutional rules".

ii) Why the EU should accede to the ECHR ? Correlated changes

There are many reasons that justify the EU accession to the ECHR; First of all, the EU is moving from an economically oriented system towards a more political one. The areas that it rules have expanded and human rights have been increasingly interconnected and applied to more sectors, such as police and judicial cooperation in criminal justice, asylum and so on. The ECHR provides a greater protection of human rights, the absence of which would lead to uncertainty and less protection.[22]

Secondly, ECHR is a safe bet, already known for its practice and its results. Metaphorically speaking, the ECHR would be the experienced adult whereas the EU on the filed of human rights would be the child. In order to safeguard its growing, accession to the ECHR provides a parachute and a guidance on how to act where internal judgments have failed.

Thirdly, it is a matter of prominence. Together with the Charter fully incorporated in the EU, the EU would play a central role regarding human

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Perrakis, "Τα δικαιοδοτικά όρια του ΔΕΚ υπό Ευρωπαϊκή Διακυβέρνηση", Νομική Βιβλιοθήκη, 2009 Αθήνα.

[22] D. Chalmers, G. Davies, G. Monti, European Union Law, Cambridge University Press, second edition, 2010, pg 259.

rights in Europe[23], outweighing somehow ECHR[24], which actually is translated in intergovernmentalism and national settlements as well. The importance of safeguarding the nature of EU "constitutionalism" emerges on the Protocol relating to article 6(2) TEU on the Accession of the Union to the ECHR, according to which: "The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms ... provided for in article 6(2) of the Treaty on European Union shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to the specific arrangements for the Union's possible participation in the control bodies of the European Convention; the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate."[25] According to the second paragraph of this Protocol, "the agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof".[26]

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[23] Some countries, among which Belgium, Finland and Italy supported, before the Amsterdam Treaty, the necessity for a new era of human rights who would be encapsulated in the body of the newborn Treaty. White Paper on the 1996 Intergovernmental Conference, vol. II, European Parliament, 1997, http://www.europarl.europa.eu/igc1996/pos-it_en.htm, last visit: 12/5/2012.

[24] This was actually the criticism of this theory.

[25] 8th Protocol relating to Article 6(2) of the Treaty on European Union on the Accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms, par.1.

[26] 8th Protocol relating to Article 6(2) of the Treaty on European Union on the Accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms, par. 2.

The obligations arose by the EU accession to the ECHR were revealed in the *Bosphorus* judgment.[27] Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi[28] was a Turkish air charter company that had leased aircrafts in 1993 from the former Federal Socialist Republic of Yugoslavia (former Yugoslavia) and had them maintained in Ireland. However, UN sanctions that were in force at the time, obliged Ireland that complied to EU Regulation, to impound the aircrafts. Bosphorus main argument was that this action violated the right to pursue a business. Yet, the Irish courts followed the approach of similar judgments,[29] where according to the legal reasoning[30] Community law is not checked by the national Constitutional Courts when the level of protection of human rights lays below the other one.[31] Following a preliminary question, the ECJ replied that it did not violate any freedom.[32] Subsequently, Bosphorus asked protection from the ECHR where he filed a complaint on the grounds of right to property.[33]

The ECHR applied the doctrine of equivalent protection in order to detect State responsibility.[34] In other words, it determined whether the EU provides an equivalent protection to the ECHR, concerning human rights. In case the system of protection of human rights would be below to that of the ECHR, the action would not be upheld. It should be highlighted here that even if the

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[27] C-84/95 Bosphorus Airlines v Ireland, 1996.

[28] Erik Drewniak, Bosphorus Case: The Balancing of Property Rights in the European Community and the Public Interest in Ending the War in Bosnia, Fordham International Law Journal, Volume 20, Issue 3 1996 Article 11, pg. 1061-1088.

[29] As the ones followed by the Bundesverfassungsgericht (BVerfG – Federal Constitutional Court).

[30] Solange II, Banana Market case.

[31] Frank Schorkopf, The European Court of Human Rights' Judgment in the Case of Bosphorus Hava Yollari Turizm v. Ireland, pg. 1264, http://www.germanlawjournal.com/pdfs/Vol06No09/PDF_Vol_06_No_09_1255-1264_Developments_Schorkopf.pdf, last visit: 13/5/2012.

[32] Bosphorus v Ireland, No. 45036/98, 2005.

[33] Protocol 1, first rticle.

[34] C. Costello, "The *Bosphorus* Ruling of the European Court of Human Rights: Fundamental Rights and Blurred Boundaries in Europe", 2006, http://hrlr.oxfordjournals.org, last visit: 12/5/2012.

measure infringes the ECHR, this will not lead to inversion. Another element is needed, that of "manifestly deficient". This turns to be a weaker test in comparison to the one regarding States that might have violated the ECHR. "One has the feeling almost of a nonaggression pact between the two European courts, whereby the Court of Justice will slavishly follow the case law of the European Court of Human Rights, whereas the latter will intervene only in cases of the most grotesque dysfunction."[35] Following the accession of the EU to the ECHR, this privileged remedy should be expected to change. There will be no differentiated treatment as a sign of respect towards a supranational system but every member of the ECHR should be treated exactly as any other contracting party and therefore, no one will hide behind its obligations.

iii) Remarks

The Court expanded its jurisdiction in areas where there are no formal links to the Convention. Besides, it presumed that the measures laid down by the EU legal order were compatible with the ones of the ECHR legal order. And that the whole European system is determined by a system of human rights that functions at approximately the same level and provides at least analogously equal protection, unless of course there are elements that of manifest dysfunction and deficiency concerning protection of human rights.
The Court's doctrine of equivalent protection reconciles two opposite aspects: "the recognition of the accommodation of human rights concerns by the ECJ and recognition of the specificity and autonomy of the Community law system."[36]
How this judgment should be read, is of vital importance. Indeed, this text has a more political aspect than a legal one. "Even if "forced" accession as a consequence of the Bosphorus judgment might be too strong a term to use, it

[35] D. Chalmers, G. Davies, G. Monti, European Union Law, Cambridge University Press, second edition, 2010, pg. 261.

[36] Charles F. Sabel and Oliver Gerstenberg, Constitutionalising an Overlapping Consensus: The ECJ and the Emergence of a Coordinate Constitutional Order, European Law Journal, Vol. 16, No. 5, September 2010, pg. 519.

nevertheless puts the EC under the de facto control of the ECtHR through indirectly invoking the Member States' responsibility. With the new manifest deficiency approach, the ECtHR has endowed itself with a considerable measure of discretion".[37]

[37] Kathrin Kuhnert, Bosphorus – Double standards in European human rights protection?, Research paper, pg. 188, http://www.utrechtlawreview.org/index.php/ulr/article/viewFile/31/31, last visit: 13/5/2012.

PART II

Freedom of expression; a grammatical analysis

A) First paragraph of the article

a) General observations

Freedom of expression is the safeguard for democratization and the personal development of every individual. Thus, the protection of such a right should be quite broad[38] and indeed the scope of the application of article 10 ECHR extends to any type of expression, by any means, albeit its content[39], with the exception of ideas disseminating hatred, racial speech and Nazi ideology due to historical reasons.[40]

According to the Court: "Freedom of expression constitutes one of the essential foundations of a society, one of the basic conditions for its progress and for the development of every man. With the restriction of the second paragraph of article 10, freedom of expression is applicable not only to 'information and ideas' that are favouring one or, in contrary they favour no one, but also to those that even offend and shock, in view of eventually favouring pluralism and tolerance, the founding pillars of democracy. [41]

Concerning its structure, article 10 ECHR is "rather a qualified than an absolute right"[42] since it extends into two paragraphs, where the first one provides the scope of application of this freedom in a positive way, let alone

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[38] Through a systemic interpretation, freedom of expression is delimitated by the rights of other individuals and groups as well by the factors named in the second paragraph of article 10 ECHR.

[39] Joanna Krzeminska, Freedom of commercial speech in Europe, Zentrum fur Europaische Rechtspolitik, University of Bremen, Research Training Network, "Fundamental Rights and Private Law in the European Union", available at: http://aei.pitt.edu/3043/1/JKrzeminska_EUSA_paper.txt last visit: 5/1/2012, introduction.

[40] Based on international law and more specifically on the Convention for the Elimination of Racial Discrimination. Jorchen S. Nielsen et all, Yearbook of Muslims in Europe, Volume 1, IDC Publishers, Martinus Jihoff Publishers and VSP, 2009, pg. 510.

[41] Handyside v United Kingdom, 1976.

[42] A summary of the Atlantic Council/Chatham House meeting held at Chatham House on 10/11 November 2010, Transatlantic Dialogues in International Law: International Law and Human Rights, pg 13.

the different aspects of the right, and the second one its delimitations upon which the national state may legitimately invade.
Hence, limitations of the freedom of expression are enlisted in the second paragraph, which may legitimately allow states' interference. The Court stated that this is: "a principle of freedom of expression that is subject to a number of exceptions which must be narrowly interpreted ... it is not sufficient that the interference belongs to that class of the exceptions listed in article 10 which has been invoked; neither is it sufficient that the interference was imposed because its subject-matter fell within a particular category or was caught by a legal rule formulated in general or absolute terms: the Court has to be satisfied that the interference was necessary having regard to the facts and circumstances prevailing in the specific case before it." [43]

b) Rights included in the freedom of expression

The first paragraph of article 10 ECHR encompasses the main freedoms that constitute the right to express one freely. These are the freedom to hold opinions, the freedom to impart information and ideas, the freedom to receive the latter ones, and the radio and television broadcasting. Special attention should be given to the freedom granted to the press. Although -and surprisingly- it is not *expressis verbis* mentioned in the first paragraph of article 10 ECHR, nonetheless, the Court has extensively dealt with it,[44] including it subsequently in the catalogue of the freedoms encapsulated in the freedom of expression.[45]

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[43] Sunday Times v United Kingdom, 1979.

[44] Π. Αρτέμης, Η ελευθερία του λόγου και της έκφρασης: η ελευθερία του τύπου, το δίκαιο της δυσφήμησης και το προνόμιο υπό επιφύλαξη, Ημέρα Πολιτικής Δικαιοσύνης, 23 Οκτωβρίου 2008, pg. 3, available at:
http://www.supremecourt.gov.cy/judicial/sc.nsf/0/F5B39E98EDCFEBA5C225750D0029826B/$file/Politiki-Dikeos-23Oct.08.pdf last visit: 05/1/2012.

[45] Jochen Frowein, Freedom of expression under the European Convention of Human Rights, Document prepared by the Secretary General's monitoring unit, Compliance with commitments entered into by member states: Information concerning the Committee of Ministers' monitoring procedure, Freedom of expression and restrictions included in the penal

i) The freedom to hold opinions

Freedom to hold opinions, or *liberté d' opinion* in French, could be perceived as a meaningless freedom with no obvious impact in the outer world. Taken for granted that one is free to shape their own believing without further communicating them to others, freedom to hold opinions seems less fundamental. Nonetheless, it is the mere right not to convey your opinion, hence not to being prompted to do so, that structures the negative aspect of the freedom to hold an opinion.[46]

According to fundamental rights' theory, freedom of expression protects individuals against state interference (*status negativus* of fundamental rights). More specifically, the right to hold one's personal opinion opposes to the states' attempt to indoctrinate their citizens and shape their thoughts from the generation of the legal reasoning.[47]

On the other hand, it is the positive aspect of this fundamental right which demands for public policies that promote a well-rounded dissemination of information towards citizens[48], since, on the contrary, a monolithic one, may provoke the manipulation of its receivers.

Another field in which states should abstain from interfering to the freedom to hold an opinion is in relation to equal treatment of its citizens after a statement has been made from the non-privileged party, i.e. from the citizen. The latter implies that same categories of people be treated in the same manner without any distinction based on one's opinion. This certainly illustrates the need for

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code and other legal texts: seminars held in Budapest and in Strasbourg, Monitor/Inf (97) 3, Council of Europe, 1997, pg. 10.

[46] Monica Macovei, ibid, pg. 8.

[47] Laurent Pech, Freedom of Expression and Disability, Symposium on Human Rights & Disability Discrimination: Exploring the Value Added by the ECHR, September 25, 2004, pg. 3, available at: http://www.nuigalway.ie/law/documents/working/4%20CPS%202004.pdf, last visit: 05/1/2012.

[48] Laurent Pech, ibid, pg. 3.

people not to be stigmatized, thus treated differently, due to their persistence in certain beliefs.[49]

ii) The freedom to impart information and ideas

Besides the right to hold opinions, article 10 of the ECHR encompasses as well the right to impart information without government's interference, "a positive duty of care for public authorities to secure an adequate protection of this freedom. This idea is related to the general evolution of the socializing of human rights and freedoms in Europe."[50]

It should be mentioned at this point, the difference between the notion of information and the notion of idea which subsequently affects both the procedural and the evidentiary methods.[51] According to the Court, information is a fact, the existence of which may be demonstrated and proved, whereas ideas are opinions, i.e. non-objective but rather personal value judgments whose reality may not be proved.[52]

The significance of this aspect of the freedom of expression is that any kind of restrictions will not be in alliance with a democratic society,[53] owing to the fact that its impact to the political and democratic life of a state is of great importance. More specifically, free national elections may only bear

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[49] Jochen Frowein, ibid. pg. 8.

[50] Caroline Uyttendaele, Joseph Dumortier, "Free Speech on the Information Superhighway: European Perspectives", The John Marshall Journal of Computer & Information Law, L 905, summer 1998, pg. 432.

[51] Stijn Smet, Freedom of expression and the right to reputation: Human Rights in Conflict, American University International Law Review, 26:1, 2010, pg. 215.

[52] Dichand and Others v. Austria, 2002.

[53] Report of the Committee of Ministers, in Van Dijk and Van Hoof, Kluwer, Theory and Practice of the European Convention on Human Rights, 1998, pg. 413. The Committee of Ministers is a body of the Council of Europe that supervises the execution of the ECtHR' decisions, Rhona Smith, Textbook on International Human Rights, Oxford University Press, 3rd edition, 2007, pg. 93.

democratically generated results if freedom to impart information and ideas takes place.[54]

On the same level, criticism towards governments may only be addressed in cases where this freedom actually exists. The Court ruled that political issues are another area the press is incumbent on to impart information just as every other area that is of interest to the public. [55]

Moreover, the Court made explicit reference to the broad nature of information and ideas disseminated, not only to those that are "favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness..."[56]

Furthermore, commercial speech, meaning the right to impart information on matters of economic nature is also encompassed within the scope of freedom of expression. Nonetheless, the jurisprudence of the Court[57] indicated a hesitation to grant to commercial speech full protection, equivalent to the one granted to political speeches. It needs to be clarified at this point that there is no distinction between different forms of expression and subsequently their protection, under article 10 ECHR. However, the Court opted for a greater margin of appreciation[58] in favour of the national authorities regarding

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[54] Comparative Study of Laws and Regulations Restricting the Publication of Electoral Opinion Polls, by Article 19, Global Campaign for Free Expression London. January 2003, pg 1-3.

[55] Sener v. Turkey, 2000.

[56] Handyside v United Kingdom, 1976.

[57] Markt Intern Verlag GmbH and Klaus Beermann v. the Federal Republic of Germany, 1989, Jacubowski v. Germany, 1994.

[58] The task of the Court is to find a "tenuous passage between the interference with the sovereignity and autonomy of national authorities, in particular supreme and constitutional courts, on the one hand, and the effective protection of the rights guaranteed under the Convention, on the other. One of the main instruments employed in this delicate exercise of navigation is the doctrine of "margin of appreciation" ... where the test is whether an interference with fundamental rights corresponds to a pressing social need.", Howard Charles Yourow, The margin of appreciation doctrine in the dynamics of European Human Rights jurisprudence, International Studies in Human Rights, Martinus Nijhoff Publishers, 1996, preface.

commercial speech; thus, further limitations to the freedom of expression may be imposed, contrary to political speech.[59]

In comparison with earlier cases,[60] evolutions on the Court's attitude showcased that commercial speech enjoys less protection than mixed or purely political speech, mainly due to economic grounds. It may also be argued that the Court, like any international court would be inclined to do, prioritizes values and interests and upon response, gives more or less space to domestic authorities to act.[61]

Another means through which freedom of expression expanded is via the works of art, such as novels, poems, paintings and etc. The right to artistic expression, although not *expressis verbis* protected under article 10 ECHR, it does have received a high level of protection since the artistic creation is another form of expression. The reason for this wider protection derives from the limited -usually- impact a piece of art may have and the narrow audience the latter addresses, with the exception of films.[62]

In other words, exchange of ideas and opinions in a more cultural environment constitutes another element of a democratic society, since usually obstacles to the circulation of work of arts take place in non-democratic societies, since artists tend to challenge the *status quo* and for that reason democracies should actually require more art.[63]

It is for the above reason that, artistic performance is not only seen as a means of personal and individual creation and performance, but also as an

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[59] Joanna Krzeminska, Worlds in Collision: Freedom of Speech and Unfair Competition; Are There Less Fundamental Zones within the Right to Speak Freely? The Case of Commercial Speech, nternational Conference on Conflicts Between Fundamental Rights, Ghent, Belgium, December 15, 2006.

[60] Hertel v. Switzerland, 1998.

[61] Christoph Beat Graber, Freedom of Expression and Unfair Competition: The Hertel Case and
Beyond, Discussion Paper prepared for the second Conference of the ASIL Project on International Trade and Human Rights World Trade Institute, Bern, June 13/14, 2003, pg. 4.

[62] Cultural rights in the case-law of the European Court of Human Rights, Research division of the ECHR, Council of Europe / European Court of Human Rights, January 2011, pg. 5.

[63] Caroline Levine, Provoking Democracy: Whe We Need the Arts, Blackwell Publishing, 2007, pg. 5.

expression of an era, and of the concerns of a whole society.[64] As putted clearly by the Commission: "art not only helps shape public opinion but is also an expression of it and can confront the public with the major issues of the day."[65]

In *Müller*[66] the Court ruled that freedom of artistic expression is encompassed within the freedom of expression and more specifically within the freedom to impart and receive ideas.[67]

Müller was an artist that created some paintings during an exhibition which depicted images of sodomy and homosexual acts. After a father's complaint, paintings were withdrawn from the exhibition, a fine was imposed to the artist, after him being prosecuted, and eventually the confiscated paintings were destroyed.

All the actions mentioned above fell within the category of freedom of artistic expression. With respect to the restrictions that may be imposed by national authorities when freedom of expression violates morals, the Court ruled that the artist's conviction did not breach freedom of expression, mainly due to the fact that the exhibition was open to the public.[68]

Scholars[69] however, opposed to the judgment of the Court on the grounds of proportionality, although the latter had allegedly been taken into consideration from the judges, apparently from a different perspective. It is argued that the destruction of the paintings, contrary to the fine imposing, seizure and confiscation, was disproportionate, since the paintings in question may have been welcomed in other exhibitions addressing to different audiences.

Another well known case is the one of the Muhammad cartoons first published in the Jyllands-Poste, a Danish newspaper. The controversy started in 2005 when cartoons that depicted the Islamic prophet Muhammad, were published

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[64] Monica Macovei, ibid, pg. 9.

[65] Otto-Preminger Institut v. Austria, 1994.

[66] Müller and Others v. Switzerland, 1988.

[67] Cultural rights in the case-law of the European Court of Human Rights, ibid, pg. 5.

[68] Freedom of expression in Europe, Case-law concerning article 10 of the European Convention on Human Rights, Human Righst Files, No. 18, Council of Europe Publishing, 2007, pg. 86.

[69] Dirk Ehlers, Europen Fundmental Rights and Freedoms, de Gruyter, 2007, pg. 101.

in the Jyllands-Posten in an attempt to enhance the debate between criticism of Islam on the one hand and freedom of expression on the other.
The local Muslim organizations objected to that by publicly protesting in order to raise awareness and disseminate their disapproval on the publication.
Soon, the cartoons were reprinted in other newspapers globally. Violence occurred with instances such as reported deaths, bombing the embassy of Denmark in Pakistan, setting fire to the embassies of Denmark in Lebanon and Iran and so on. Groups from the Western world supported Denmark with different displays and campaigns.
On the one hand, there were the so called Islamophobic or racist powers, blasphemous and against the Muslim faith, in favor of the
Western imperialism.
Contrary to that it was argued that the cartoons illustrated a significant issue regarding Islamic terrorism and their publication meant to be a legitimate exercise of the freedom of expression. It should be noted that Muslims were not targeted discriminatory, since other cartoons of religious leaders were frequently printed.[70]
In 2012, the court of Tunisia condemned a Tunisian person for uploading sketchs of Muhammed on facebook on the grounds of inciting prejudice to others via communication channels, provoking the public order and the mores. Thus, still this day freedom of expression is not guaranteed for all but it is rather ambiguous, subjected subsequently to self-censorship.

iii) The Freedom to receive information and ideas

Freedom of expresson works on a two edges channel, the freedom to impart information as well as ideas and the right for the public to receive them. This result into two crucial points:
Firstly, the right to receive information is the basis for enhancing plurality and then for the individuals to make a choice among others. Hence, this freedom

[70] Δ. Κρυωνίδης, Σχόλια εποχής, Λογική και ευαισθησία, http://www.intellectum.org/articles/issues/intellectum1/p111112_(telos_epoxis_kryonidis).pdf, last visit: 30/07/2012.

to make a choice renders effectiveness to the whole system of fundamental rights, since a pre-condition to make a choice is the availability of the information.[71]

Secondly, applicants that have legal standing in front of the ECHR are also newspaper readers and television viewers.[72] It is doubtful the extent to which this aspect of the freedom of expression may be enforceable; nonetheless, the positive obligation of domestic authorities to safeguard this right impose a duty of non-intervention between transmitter and receiver in relation to printed and broadcast media.

iv) Freedom of the press

The absence of the explicit protection under the ECHR of the freedom of the press is remarkable. However, the Court has extensively developed a broad spectrum of case-law, according to which press, thus most of the times journalists as applicants, fall within the scope of the article.[73]

Early on, in *Lingens*[74] the role of the press "as political watchdog"[75] was underlined.

The facts of the case were the following; Lingens, a journalist had claimed Austrian Chancellor's behaviour to be immoral and of the lowest opportunism owing to the fact that he had announced the coalition of his party with another one whose leader was of a Nazi background.

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[71] Tania Groppi, Freedom of thought and expression General Report, Political Structure and Human Rights-European Union Meeting Union of Turkish Bar, Ankara, 16-18 april 2003, pg. 2.

[72] Andrew Sharland, Focus on Article 10 of the ECHR, Judicial Review, Vol. 14 Issue 1, March 2009, pg. 61.

[73] Jochen Frowein, ibid. pg. 10.

[74] Lingens v. Austria, 1986.

[75] A reverse example is the Campbell v MGN, 2011. Photos of Cambell shot outside the clinic where she was receiving treatment for drug obsession, and details of the hours and number of visits she was paying there served, as the Court observed, for the sole purpose of satisfying readers' "apetite", yet they contributed nothing in a political level nor in the public interest.

The Austrian Chancellor filed an action against the journalist and won the case on the grounds of defamation, since the truth of the statements could not be proven.

Nevertheless, the Court opposed the Austrian courts' approach since opinions are value judgments, thus non-susceptible of proof.[76] In addition, it is the political world that urges for closer scrutiny of the politicians since they expose not only their actions, but also themselves when executing their duty to serve the others.[77]

Hence, since political issues are of public interest, it is their right to receive such information and ideas, while it is the right of the press to disseminate such information. This procedure is the cornerstone of democratic liberty and equips the people with adequate information in order to shape and enhance their personal believing of political leaders.

In *Thorgeirson,*[78] the Court broadened the scope of subjects that are of public interest, so as not to include only political debates, but more generally, matters of public debate. In this case, the applicant highlighted in the press the police brutality that was then widespread in Iceland by calling policemen "beasts in uniform". He was found guilty for defamation against unspecified police officers.

According to the Court, any conviction of such a nature may have discouraging effects for open discussions as regards public concern, therefore it sought to secure freedom of expression overstepping to other notions. The article in the press was an amalgam of rumoured allegations deriving from the public in general against the police. Even though, there was no verified truth written down on the article, this is not a precondition for one to be published; otherwise newspapers would publish almost nothing.[79]

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[76] Case study 63 – article 10 of the ECHR (Freedom of expression and political elections), Council of Europe, 2007, pg. 5.

[77] Freedom of expression in Europe, ibid, pg. 12.

[78] Thorgeir Thorgeirson v. Iceland, 1992.

[79] Mario Oetheimer, Les « devoirs » et « responsabilités » des journalistes : une garantie à l'exercice de la liberté d'expression ?, Projet de rapport, 2008, pg. 6, available at: http://www-ircm.u-strasbg.fr/seminaire_oct2008/docs/Oetheimer_Devoirs_et_responsabilites.pdf, last visit: 05/1/2012.

Furthermore, the journalistic sources, as a pre-condition of the freedom of the press fall under the protective scope of article 10 ECHR, teleologically interpreted. In two cases[80] the Court upheld that view;
In *Thoma* the Court did not condemn the journalist for not distancing himself from the alleged accuses of the quotation in question, but rather he adopted them, providing them with more credibility. It claimed that the sources of the journalist enjoy the same breadth of protection, in absence of which freedom of the press and subsequently freedom of expression would be impractical.
In *Jersild*[81] the Court weighted on the one hand the freedom of expression and on the hand, the protection from racial discrimination.[82] It stated that "punishment of a journalist for assisting in the dissemination made by another person ... would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly string reasons for doing so."[83]

v) Freedom of radio and television broadcasting

Freedom of expression is also applicable on radio and television broadcasting. This last sentence of the first paragraph of article 10 seems nowadays somewhat obsolete since individuals do have access to broadcasting, contrary to the older times of the preparatory work of the ECHR where the limited in number radio and television frequencies were part of the state monopoly.[84]

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[80] Thoma v. Luxembourg, 2001 and Jersild v. Denmark, 1994.

[81] Concerning hate speech and its protection - which is contested as ambiguous -the Court had "only once examined the interaction between freedom of expression and the International Convention on the Ellimination of All forms of Racial Discrimination.", Tarlach McGonagle, "Wresting (Racial) Equality from Tolerance of Hate Speech", 23 Dublin University Law Journal (ns) 21, 2001, pg. 11.

[82] Li Haopei, International law in the post -cold world war, Routledge studies in international law, 2001, pg. 346.

[83] Jersild v. Denmark, 1994

[84] Monica Macovei, ibid, pg. 9.

"For a long time the Commission did not see any incompatibility between State monopolies of radio and TV and the Convention"[85], until 1993, when the Court found a breach of article 10 ECHR of the Austrian Radio Monopoly[86].
In *Informationsverein Lentia* the Court mentioned the development of the technology - satellite transmissions and cable televisions - that changed the grounds for justification of restrictions in the name of the number and availability of frequencies and channels.
In that sense, the Court restricted the openness of the right, namely not every one is allowed to broadcasting, but in order to set up a broadcast station, national authorities should supervise and framework this right. State's interference should be executed only for technical purposes.[87]
The long-term aim for pluralism of sources of information appears to be in connection to the general notion of pluralism that guarantees the existence of a democratic society, which is cause and result of liberty at the same time.[88]
Public monopolies of the means of communication are only justified in countries that are characterized by state's invasion and they manipulate the internal expression, leaving no space for communication that exceeds national frontiers.

c) Definition of "expression"

The subject of protection of article 10 ECHR is the expression *lato sensu*. The broad interpretation extends to what constitutes the notion of expression as well as the means through which this is exercised. Expression that is protected under ECHR is not limited to words; on the contrary it includes images let alone other actions aiming at expressing an idea. The means via which expression is disclosed regards documents, radio, television, paintings, electronic information and any future system of communication.[89]

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[85] Jochen Frowein, ibid, pg. 12.

[86] Informationsverein Lentia and Others v. Austria, 1993.

[87] Groppera Radio AG and Others v. Switzerland, 1990.

[88] Alastair Mowbray, European Convention on Human Rights: The 12th Protocol and recent cases, Human Rights Law Review, Vol. 1, N. 1, 2001, pg. 136.

[89] Monica Macovei, ibid, pg. 15.

The right to remain silent[90], although not *expressis verbis*, it is also included as the negative aspect of the freedom of expression. This right has been mainly connected to criminal proceedings where the accused person guards the right not to self incrimination.[91]

When it comes to speech that promotes the Nazi ideology, denies the existence of the Holocaust or incites hatred and racial discrimination, article 10 ECHR does not provide any protection. This does not imply however that the mere use of the term "Nazi" for example, automatically suffices for the Court's denial to render protection under article 10 ECHR[92]; Seeing it from the opposite perspective, the Court has been careful to examine whether the terms in question provoke a public debate or commonly used, often by extreme right-wing politicians. [93]

For instance, the denial of the Holocaust was found as inadmissible case[94] from the Commission. A historian, after being fined for making public statements in which he denied that gas chambers in Auschwitz ever existed as such, he asked protection from the Court. He was claiming that his freedom of expression was suppressed for being fined about his statements that gas chambers were constructed during the post-war days and for which the German people were taxed. However, the complaint never reached the chambers of the Court noting that these statements were in contradiction with the "principles of peace and justice expressed in the Preamble to the Convention, and that they have advocated racial and religious discrimination."[95]

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[90] Van Dijk and Van Hoof, Kluwer, Theory and Practice of the European Convention on Human Rights, 1998, pg. 565.

[91] Mark Berger, Europeanizing self – Incrimination: The right to remain silent in the European Court of Human Rights, Columbia Journal of European law, Vol. 12, 2006, pg. 340.

[92] Jean-François Flaus, The European Court of Human Rights and the Freedom of Expression, Indiana Law Journal, Vol. 84, Issue 3, Art. 3, 2009, pg. 819 - 820.

[93] Stijn Smet, ibid, pg. 207, 208.

[94] D.I. v. Germany, 1996.

[95] Monica Macovei, ibid, pg. 19.

B) Restrictions to the freedom of expression:

a) General observations

article 10 of the ECHR is deployed in a qualified manner as it is the case with other provisions in the ECHR where the first paragraph lies down the rule and the second one claims the restrictions.

As stated in the second paragraph of article 10: "The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."[96]

The limitations named above may be interpreted in a non-abusive way, namely that the domestic authorities do not interfere to the freedom of expression in any case they are capable of applying one of the conditions enumerated in this paragraph. The outcome would be a restriction of the core of this right, which in the end violates the same body of the ECHR.[97]

This is *expressis verbis* listed on article 17 according to which: "Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."[98]

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[96] Art. 10 ECHR.

[97] Hannes Cannie and Dirk Voorhoof, The abuse clause and freedom of expression in the European Human Rights Convention: An added value for democracy and human rights protection?, Netherlands Quarterly of Human Rights, Vol. 29/1, 54–83, 2011, pg. 57.

[98] Art. 17 ECHR.

b) Restriction of conformity with duties and responsibilities

The exercise of the freedom of expression is meant to be carried out in accordance with duties and responsibilities, a phrase existing only in this provision of the ECHR. It mainly links the limitation to freedom of expression to individuals of specific professional categories, namely civil servants,[99] who should perform their duties and responsibilities under certain conditions.
In *Engel*[100] some soldiers created and circulated a paper which condemned senior officers. Although the Court perceived the ban of this paper as a legitimately justified interference, in alliance with the second paragraph of article 10 ECHR, yet, it claimed that depriving the soldiers of their right to express themselves in the first place would be in opposition to the freedom of expression. The only justified interference comes in the second place, with the punishment of the act in question.
In *Hadjianastassiou*[101] the Court applied the same logic. Hadjianastassiou was a Greek civil servant who disclosed classified information about technical knowledge of weapons; this action constituted a threat to national security.[102] The Court ruled that: "it is necessary to take into account the special conditions attaching to military life and the specific "duties" and "responsibilities" incumbent on the members of the armed forces ... The applicant, as an officer in charge of an experimental missile programme, was

[99] Marie McGonagle, Restrictions to the expression of opinions, or disclosure of information about politicians or civil servants, Document prepared by the Secretary General's monitoring unit, Compliance with commitments entered into by member states: Information concerning the Committee of Ministers' monitoring procedure, Freedom of expression and restrictions included in the penal code and other legal texts: seminars held in Budapest and in Strasbourg, Monitor/Inf (97) 3, Council of Europe, 1997, pgs 21, 22.

[100] Engel and Others v. the Netherlands, 1976.

[101] Hadjianastassiou v. Greece, 1992.

[102] A. Rzeplinski, Restrictions on the expression of opinions or disclosure of information on domestic or foreign policy of the state, Document prepared by the Secretary General's monitoring unit, Compliance with commitments entered into by member states: Information concerning the Committee of Ministers' monitoring procedure, Freedom of expression and restrictions included in the penal code and other legal texts: seminars held in Budapest and in Strasbourg, Monitor/Inf (97) 3, Council of Europe, pg 31.

bound by an obligation of discretion in relation to anything concerning the performance of his duties."[103]

Later on however, the Court equated all citizens and ruled that they should be treated in the same way, with no due regard to their position. In *Vereinigung Demokratischer Soldaten Österreichs*[104] the Court went against Austrian government ruling that the document condemning the army was a pool of views and proposals stipulating for the improvement of the administrative system.

In *Vogt,*[105] a teacher in public school was laid off because of her adherence to the German Communist Party and after her denial to withdraw from it. Her supervisor exercised the discretion legally provided, aiming at securing constitutional provisions due to historical reasons. The Court reaffirmed the previous decision and found an infringement of the freedom of expression by stating that: "although it is legitimate for a State to impose on civil servants, on account of their status, a duty of discretion, civil servants are individuals and, as such, qualify for the protection of Article 10."[106]

c) The requirements for legitimate interference with the exercise of freedom of expression

Three in number are the requirements which should take place cumulatively[107] in order to have a legitimate state's interference. First of all, the restriction should be prescribed by law; secondly, it should be necessary in a democratic society and thirdly it should protect alternatively interests and values such as national security, territorial integrity, public safety, prevention of disorder or crime, protection of health, morals, reputation or rights of others, or preventing the disclosure of information received in confidence, or maintaining the authority and impartiality of the judiciary.

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[103] Hadjianastassiou v. Greece, 1992.

[104] Vereinigung Demokratischer Soldaten Österreichs und Gubi v. Austria, 1994.

[105] Vogt v. Germany, 1995.

[106] Vogt v. Germany, 1995.

[107] Monica Macovei, ibid, pg. 29.

As clearly put in *Sunday Times*[108], "Strict interpretation means that no other criteria than those mentioned in the exception clause itself may be at the basis of any restrictions, and these criteria, in turn, must be understood in such a way that the language is not extended beyond its ordinary meaning. In the case of exceptional clauses the principle of strict interpretation meets certain difficulties because of the broad meaning of the clause itself. It nevertheless imposes a number of clearly defined obligations on the authorities."[109] In that sense, it is the freedom of persons that should overstep States' claimed-to-be interests.[110]

Moreover, the notion of the state, which may legitimately interfere upon fulfilment of the aforementioned conditions is a broad one, meaning any authority that exercises public power, besides Government's departments, such as courts, police and the army.[111] The national courts in that instance serve at the same time as public power executors and as environments where the ECHR is enforced in the first place.

i) The prescribed-by-law condition

Any state interference in order to be legitimate should be based in national law. This is mainly due to the fact that a written rule which was adopted by national parliaments bears significant leverage, in the sense that this law was already known and adequately accessible to the public, entailing that citizens received clear indications about how to formulate their conduct.[112]

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[108] Sunday Times v. the United Kingdom, 1979.

[109] Sunday Times v. the United Kingdom, 1979.

[110] A. Rzeplinski, ibid, pg 24.

[111] Monica Macovei, ibid, pg. 30.

[112] Andrzej Rzeplinski, Restrictions to the expression of opinions, or disclosure of information on domestic or foreign policy of the State, Document prepared by the Secretary General's monitoring unit, Compliance with commitments entered into by member states: Information concerning the Committee of Ministers' monitoring procedure, Freedom of expression and restrictions included in the penal code and other legal texts: seminars held in Budapest and in Strasbourg, Monitor/Inf (97) 3, Council of Europe, 1997, pg 25.

For that reason, laws should also be precise, in order for the citizens to foresee the consequences of their future actions.[113] Of course, this reasoning may be generated with a degree of high probability because absolute certainty emerges as practically infeasible. Lastly, interpretation is the key word for vague laws that leave gaps since they contain norms which may acquire different meanings.[114]

According to the *nullum crimen nulla poena sine* principle, crimes such as defamation should have been enlisted in the national legal order. However, this principle takes place for the romano - germanic legal orders, exempting the commonwealth countries. Hence, the Court has exceptionally accepted common law principles as a legal basis for the state invasion in freedom of expression. Same applicability has scarcely developed with regards to international law.

ii) Restrictions necessary in a democratic society

In order to verify the prerequisite of the democratic society, domestic authorities and national courts should employ the proportionality test.[115] In order to pass this test, a measure adopted by national authorities against the freedom of expression of a person or group should identify to the following questions: Firstly, the means used should be appropriate to reach the aim, secondly they should be also necessary, meaning that there are no less severe means in order to achieve the same aim and thirdly, these means are reasonable as well.

Therefore, in order to apply the principle of proportionality, so as the restrictions be necessary in a democratic society, the aim targeted is the special interest or value invoked by the state; namely national security, territorial integrity or public safety, prevention of disorder or crime, protection of health or morals, protection of the reputation or the rights of others,

[113] Andrzej Rzeplinski, ibid. pg 25.

[114] Sunday Times v. the United Kingdom, 1979.

[115] The margin of appreciation, Judicial Professions, The Lisbon network, available at: http://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/ECHR/Paper2_en.asp, last visit: 22/1/2012.

preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

iii) Analysis of the grounds of legitimate restrictions

1) Freedom of expression and national security

A leading example on the role of national security as a restriction to the freedom of expression is the *Observer and Guardian*[116] case. The two newspapers intended to publish abstracts from a book written by a former intelligence agent, where alleged unlawful acts of the British intelligence service would be depicted.

Following General Attorney's request for a permanent injunction that would not allow any publishment of extracts from the book, the courts issued a temporary one till the final adjudication. A year later, the book in question was published in the United States and copies reached also the United Kingdom.[117]

The House of Lords rejected the extension from temporary to permanent injunctions while the publishers of the newspapers complained to the Court about the temporary injunctions. The United Kingdom claimed that the information available to the author was confidential and it was accessible during his serving as an intelligent agent. The piece of information published would damage the intelligence system of the United Kingdom.

The Court replied to those arguments by differentiating the nature of the press as a means of disseminating information timely, without delays leading to less interest and deflating value.

It upheld only the injunctions prior the book was published, not those following its publication since the classified information contained in the book could not further characterized as such. The dissenting opinion claimed that injunctions

[116] Observer and Guardian v. the United Kingdom, 1995.

[117] http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/e4ca7ef017f8c045c1256849004787f5/39da9ae9352064e3c1256640004c1b45?OpenDocument, last visit: 21/1/2012.

were unjustified in the first place because the role of the press is to deal with current affairs and the right of the public to receive information was violated.

2) Prevention of disorder or crime

In *Incal*[118] Turkish authorities restricted freedom of expression on the grounds of prevention of disorder owing to the fact that Incal, member of a Turkish Party led a campaign and distributed leaflets raising once again the Kurdish question, calling Kurdish people to gather themselves so as to demand certain political solutions. Those leaflets were considered as propaganda and the Turkish court convicted him for the crime of inciting others in order to commit offences.

The Court opposed to the politician's conviction stressing out that: "while precious to all, freedom of expression is particularly important for political parties and their active members."[119] In this specific case, the conviction was found disproportionate, thus it should not have taken place in a democratic society.

An important case in the jurisprudence was *Castells.*[120] Castells was a Spanish senator, in favour of the Basque's independence who wrote an article condemning the Spanish government for failing to investigate properly murders in the Basque Community and subsequently was found guilty for inciting disorder and crime.

Nonetheless, the Court ruled that: "while freedom of expression is important for everybody, it is especially so for an elected representative of the people. He represents his electorate, draws attention to their preoccupations and defends their interests."[121] Special attention was given due to his position as an opposing party to the government. Hence, limiting criticism against government seems worse off than against a citizen, or a politician. The distinctive feature of his libel was only the means the politician had chosen

[118] Incal v. Turkey, 1998.

[119] Incal v. Turkey, 1998.

[120] Castells v. Spain, 1992.

[121] Castells v. Spain, 1992.,

aiming at transmitting his message. Instead of choosing as place of his speech the Parliament, where he would be granted impunity, he opted for a publication in the press. Thus, it is the rule of law operating in democratic states that grants special treatment to the press.[122]

3) Restrictions based on morals

A hallmark in the jurisprudence of the Court was the *Open Door.*[123] This case of conflict between morals on the one hand, and freedom of expression on the other one, showcased the necessity for the Court to find a sounding board in view of sovereignty issues.

More specifically, the case was chosen to be examined on the grounds of article 10 ECHR instead of article 2 ECHR which protects the right to life.[124] This was due to the fact that the main issue was about abortions which are forbidden in Ireland, a country that totally denied any "right to abortion".

The facts of the case were that two non-governmental organisations in Ireland, offered information to pregnant women about clinics that operated abortions in the United Kingdom. This led other organizations for the protection of unborn children to file petitions in front of the Irish courts, which in turn required - on constitutional grounds - the organizations *Open Door and Dublin Well Woman* not to impart information about abortions outside Ireland. The organisations subsequently, asked the Court to uphold their right to impart and receive information. The Court argued that the Irish moral values regarding the protection of unborn children are the basis for great margin of appreciation for the Irish authorities.

Nonetheless, the absolute nature of the prohibition on providing information without further control of the actual situation and the health of the woman looking to terminate her pregnancy seemed vague as a restriction, thus disproportionate. Adding to that, there are many other sources of obtaining

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[122] Loukis Loucaides, The European Convention on Human Rights, Collected Essays, Martinus Nijhoff Publishers, 2007, pg. 47.

[123] Open Door and Dublin Well Woman v. Ireland, 1992.

[124] Guy Scoffoni, notes from the course "Fundamental rights" at University Aix-Marseille III.

information on abortions[125], maybe some of them less verified in the sense that they show less care about the health of the pregnant woman.

4) Restrictions deriving from the right of others

The rights of others against the freedom of expression emerged as a case in connection to some racist statements broadcasted on television, as it was showcased in *Jersild.*[126]

The facts of this case were that Jersild prepared a television programme in which youth group were expressing -and were encouraged to do so- racist views. The counterarguments were that a well-informed audience followed such interviews under the general scheme of political issues such as immigration.

National courts however, convicted the journalist mainly due to the lack of separately placed statements and comments through which a genuine criticism of racist views would have occur. On the contrary, the Court in the first place highlighted the necessity to act against racial discrimination in society; even through means such as the emission in question, which was presented by hosting interviewers that expressed racist views. The cornerstone of the judicial decision was that: "the methods of objective and balanced reporting may vary considerably, depending among other things on the media in question. It is not for this Court, nor for the national courts for that matter, to substitute their own views for those of the press as to what technique of reporting should be adopted by journalists."[127]

[125] http://www.unhcr.org/refworld/country,,ECHR,,IRL,,3ae6b7020,0.html, last visit: 21/1/2012.

[126] Jersild v. Denmark, 1994.

[127] Jersild v. Denmark, 1994.

5) Freedom of expression and the authority and impartiality of the judiciary

Taking for granted that the judiciary power may also conflict with freedom of expression, then issues concerning its function may arise[128]. A hallmark in the case law of the Court on this issue was *the Sunday Times*.[129]
The facts were the following; the newspaper Sunday Times published an article discussing an issue at the same time when this same issue was brought before the national courts. This action endangered the impartiality of the judiciary while it undermined peoples' trust to judicial authorities.
The topic discussed in the articles was in connection with the use of the drug "thalidomide" from pregnant women which resulted in malformations to the children born. The drug was withdrawn from the market following actions against the production company from the parents of the victims, asking for civil damages. Every newspaper covered the issue thoroughly. The Sunday Times criticised the production company for the small compensation rendered to the victims and for its small contribution to a charity fund through an article under the title "Our thalidomide children: a cause for national shame." It further disclosed that it would publicize another article depicting in detail the actual circumstances which led to that tragedy.
The company requested - and the national courts issued - an injunction against the publication of the article on the grounds that it would obstruct justice. However, the Court found a breach of the freedom of expression stating that: "there is general recognition of the fact that the courts cannot operate in a vacuum. Whilst they are the forum for the settlement of disputes, this does not mean that there can be no prior discussion of disputes elsewhere, be it in specialised journals, in the general press or amongst the public at large."[130]
Furthermore, any area of public interest whether political, judicial or any other aspect of public life, it may be the subject of mass media. It is the inherent

[128] Marie McGonagle, ibid. pg. 21.

[129] Sunday Times v. the United Kingdom, 1979.

[130] Sunday Times v. the United Kingdom, 1979.

role of the press to keep the public well-informed of the actuality, in order to grasp their interest. Cases that have been led to justice may not be disqualified as such on the sole argument that they are treated simultaneously by the courts. Hence, the task of the media is imparting and disseminating information. On the other hand, it is the right of the public to receive them.

6) Protection of journalistic sources

Supporting freedom of expression entails the protection of journalistic sources so as the latter are not disclosed. The *Goodwin* [131] facts showcase exactly the above conflict; Goodwin, who was a journalist, found out by an anonymous source some information about the financial destabilized situation of a large company.

While preparing his article exposing the financial crisis of the firm, Goodwin asked the company to make some comments. The company in turn, pledged towards national courts asking for an injunction on the publication of the article, since this would hamper its financial interests on the market.

The injunction was subsequently issued but the court moved on further, responding to the company's request, by asking Goodwin to name his source. In this way, the company would be capable of identifying the "leak" in its gulfs and lay off the dishonest employer. However, the journalist denied naming his contact and for this reason he was fined.

The Court found that the request to reveal his source and the fine he received for "obstruction of justice" violated the freedom of expression, since the protection of journalistic sources is a prerequisite for rendering freedom to the press let alone the fact that journalistic sources may abstain from assisting journalists providing them with information if they do not feel secure enough.

The impact of this decision resulted in "Recommendation No. R (2000) 7 on the right of journalists not to disclose their sources of information" on 8 March

[131] Goodwin v. the United Kingdom, 1996.

2000 issued by the Committee of Ministers of the Council of Europe.[132] Thus, every country must respect now journalists' sources, abiding by European law along with internationally recognised legal principles. Domestic courts, in exerting their duty as guardians of the right to expression, they ought to protect the sources of the journalists even when the latter act as defendants or witnesses.

[132] Available at: http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(2000)007&expmem_EN.asp, last visit: 20/1/2012.

Part III

Case - law

1) General case-law

a) Cases related to the freedom of media

The freedom of expression granted to the media is of paramount importance, an element that we can safely estimate due the great number of jurisprudence on this specific matter. This is mainly due to the fact that the media is the means through which an opinion may be delivered having subsequently huge exposure. We have already analyzed some significant cases in the first part.[133] Nonetheless, there are more to be seen in order to gain a better understanding of how the Court perceived this freedom.
In *Barfod*[134] case, the applicant who resided in Greenland, publicized an editorial commentary in Gronland Dansk, a local newspaper condemning the composition of a local court when the latter delivered a judgment. The majoritarian synthesis of that court was two judges who were simultaneously members of the local government. However, the one litigating party of the case was the government itself. Hence, Barfod detected a conflict of interests referring to the lack of public confidence toward that legal system, for which he was convicted for defamation of the judges.[135] The Court of Strasbourg stated that it is significant to express oneself when it comes to issues of political concern. Nonetheless, "the lay judges exercised judicial functions. The impugned statement was not a criticism of the reasoning in the judgment … but rather … a defamatory accusation against the lay judges personally,

[133] Engel and Others v. the Netherlands, 1976, Sunday Times v. the United Kingdom, 1979, Lingens v. Austria, 1986, Castells v. Spain, 1992, Jersild v. Denmark, 1994, Observer and Guardian v. the United Kingdom, 1995.

[134] Barfod v. Denmark, 1989.

[135] Howard Charles Yourow, The margin of appreciation doctrine in the dynamics of European Human Rights jurisprudence, International Studies in Human Rights, Martinus Nijhoff Publishers, 1996, pg. 129.

which was likely to lower them in public esteem and was put forward without any supporting evidence."[136]

In another case which was named after the applicant's name, *Weber*[137], went against an author of a newspaper's letter on the grounds of defamation. While the proceedings were still pending before the court, Weber gave a speech during a press conference where he publicly announced his complaint. He was fined for this reason because he was found to have infringed the secrecy of the investigation. Apart from other arguments such as the violation of the right to a public hearing,[138] Weber claimed that the freedom of expression was violated as well, an allegation with which the Court agreed. More specifically, the Court admitted that the restriction of the freedom of expression aimed at maintaining the impartiality of the judicial power, however, it was found not to be in accordance with interference in a democratic society.[139] This was mainly owing to the fact that there was no interest in maintaining the secrecy of the facts since everything reported at the conference was already known.

Another case related to the freedom of expression as being restricted in the media, is the *Schwabe*[140] case. Schwabe, who belonged to the Austrian People's Party (PP), criticized through a press Wagner, a member of the opposing austrian party (Socialist Party). His allegations were based on the discrepancies found on the accusations of Wagner against two other political figures who were involved -in different timing- in car accidents. Even though Wagner had vehemently condemned the one individual for failure to resign because he was accused of abandoning one victim under alcohol influence, on the contrary, he gave his full support to his deputy as regards

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[136] http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/cases/regionalcases/europeancourtofhumanrights/nr/448, last visit 1/4/2012.

[137] Weber v. Switzerland, 1990

[138] Curtis F.G.Doebbler, Introduction to International Human Rights Law, CD Publishing, Washington D.C., 2007, pg. 82.

[139] http://sim.law.uu.nl/sim/caselaw/Hof.nsf/d0cd2c2c444d8d94c12567c2002de990/f5d84c0a23b5b18dc1256640004c1d01?OpenDocument, last visit: 1/5/2012.

[140] Schwabe v Austria, 1992.

approximately the same facts. According to the Court, the reference to the earlier accident was incidental and the comparison between the two accidents was perceived as a value judgment; and the facts of the case as substantially correct. The Court finally decided that there had been a violation of the freedom of expression because the interference was necessary in a democratic society.[141]

In addition, in a judgment called *Vereniging Weekblad Bluf!*[142], the Court unanimously decided upon the breach of the freedom of expression. An association in Amsterdam, called Vereniging Weekblad published weekly a journal entitled "Bluf!". At some point, a report of the internal security service came to their hands and consequently they wanted to publish it. However, just before it was published, the director of the internal security service informed the prosecutor and the copies were seized by the police. At the same time, an investigation emerged but it did not bear fruits. Meanwhile the journal had been reprinted and circulated to the audience, a situation which the prosecutor and the Dutch courts tried to reverse. The Court claimed[143] that the interference, i.e. the second seizure of the journal was not necessary in a democratic society since the legitimate goal of maintaining national security had been overridden by the mere fact that the report had already circulated, thus been available to the public, plus the report was old enough and bore low level of secrecy. The importance of this case lies on the fact that it became a precedent for future cases when it came to disclosure of state secrets. It should be identified here how the Court actually pays close attention at any pragmatic restriction of the freedom of expression.[144]

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[141] Eric Barendt, Human Rights Act 1998 and Libel law: Brave New World?, 6 Media & Arts Law Review 1, (2001), pg. 5.

[142] Vereniging Weekblad Bluf! v. the Netherlands, 1995.

[143] http://www.mlfoe.org/Article/Detail.aspx?ArticleUid=48d85c77-e62a-46d4-9412-f94ddb2e9b84, last visit: 1/5/2012.

[144] Report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Christos Pourgourides, Cyprus, Group of the European People's Party, Fair trial issues in criminal cases concerning espionage or divulging state secrets, Parliamentary Assembly, Doc. 11031, 2006, pg. 10.

Furthermore, the Court ruled on a case where an insulting word was referred against a politician. In other words, Oberschlick,[145] the editor of a magazine called "Forum", reproduced a speech of the leader of the Austrian Freedom Party (Freiheitliche Partei Österreichs - FPÖ) entitling it as 'Trottel' statt 'Nazi' ('idiot' instead of'Nazi').[146] This characteristic was attributed to him due to the content of his speech according to which every soldier during the Second World War had fought for peace. He even included the German soldiers, what actually provoked the criticism from the journalist.

The Austrian courts in turn they had to decide upon the accusations of defamation and insult brought by the politician. They found that Oberschlick was guilty of those crimes since the word "idiot" could not be regarded as objective characteristic.

Nonetheless, the Court did not uphold this argument[147] since it did not perceive this word as a personal attack. It also weighted the fact the speech of the politician was unconventional thus he could have expected great reactions always on the frame of his speech. For these reasons, the interference was not necessary in a democratic society and there was a violation of the freedom of expression. However, it should be noted at this point that since there was a good dissenting opinion, this specific case may not constitute an example of the reasoning of the Court, but rather an endeavour to further protect the freedom of expression.

Jørgen Pedersen and Sten Kristian Baadsgaard[148], of Danish citizenship, were journalists working with a national television channel in Denmark. In one of their programmes (compiled of two actual episodes), broadcasted in years 1990 and 1991, they discussed a murder trial concerning the murder of a woman by her own husband, a crime for which the person found guilty was sentenced to 12 years of imprisonment. The local police was criticized for the investigation it had conducted; part of this criticism, which took the form of rhetorical questions, indicated that the report of a witness, namely a taxi driver

[145] Oberschlick v. Austria, 1997.

[146] http://www.menschenrechte.ac.at/orig/97_5/Oberschlick.pdf, last visit: 2/5/2012.

[147] By five votes to four, http://merlin.obs.coe.int/iris/1995/6/article6.en.html, last visit: 2/5/2012.

[148] Pedersen and Baadsgaard v. Denmark, 2004.

ended up missing from the relevant file. The journalists wondered who – either a policeman or a prosecutor - was accountable for this omission. Further to this, they were interested in identifying[149] who had been standing such a decision to not include a seemingly important report to the file of the relevant case and asked whether this has actually been a decision to conceal evidence. Some people were named and additionally, their photographs were shown on TV. Two months after the last episode of the programme, the Chief Superintendent accused the journalists and the TV station with defamation and in November of 1991 the murder case was reopened by the Special Court of Revision. Moreover, the investigation carried out by the police, proved that the witness had not been given the right to refer to his statement and after this finding and a following retrial, the defendant was acquitted. The two journalists did not manage to escape formal charges for defamation in early 1993. After a conviction (without sentence) by the City Court in 1995, both journalists appealed, as well as the prosecution. The High Court who tried the case after this appeal, upheld their conviction and added a sentence of 400 Danish kroner (DKK), ordering them to pay a DKK 75,000 compensation to the Chief Superintendent's estate. The Supreme Court also accepted the 1st degree conviction, but additionally raised the amount of the compensation to DKK 100,000.

Valeriu *Busuioc*[150], a Moldovan national wrote an article that criticized the actions of the staff who managed the Chisinau International Airport. This article was publicized in the weekly newspaper "Express", which is written in Russian. After its circulation, six employees of the Chisinau International Airport, made an attempt to bring actions for defamation, which were later joined in a single case. In 1998, the Centru District Court of Moldova, found the article of defamatory nature for plaintiffs individually and also inaccurate concerning four of them. Consequently, building on this finding, the plaintiffs were all awarded damages subject to payment by both Mr. Busuioc and the newspaper he worked for. Approximately a year later, in 1999 the Regional Court of Chisinau accepted in part the appeal of the applicant, dismissing an

[149] Again, this "inquiry" has taken the form of a rhetorical question.

[150] Busuioc v. Moldova, 2004.

action brought originally to the District Court and reducing the awarded amount for the damages suffered, which after that point reached 2,610 Moldovan Lei (MDL)[151]. The applicant claimed that under article 10 of the ECHR, his right to freedom of expression was violated, but the Court of Appeal upheld this latest judgment.

In *ERT* case[152] , a Greek public television company with exclusive broadcasting rights at the time, asked from the Greek courts an injunction against another rival television station. The party invoked the right to free provision of services whereas the Greek government advocated that according to the articles of the EU Treaties could impose restrictions on the grounds of public policy. Therefore, the article 10 of the ECHR was invoked. According to the Court: "it has no power to examine the compatibility with the ECHR of national rules which do not fall within the scope of Community law. On the other hand, where such rules do fall within the scope of Community law, and reference is made to the Court for a preliminary ruling, it must provide all the criteria of interpretation needed by the national court to determine whether those rules are compatible with the fundamental rights the observance of which the Court ensures and which derive in particular from the ECHR. In particular, where a Member State relies on the combined provisions of [Articles 52 and 62 TFEU] in order to justify rules which are likely to obstruct the exercise of the freedom to provide services, such justification, provided for by Community law, must be interpreted in the light of the general principles of law and in particular of fundamental rights. Thus the national rules in question can fall under the exceptions provided for by the combined provisions of [Articles 52 and 62 TFEU] only if they are compatible with the fundamental rights the observance of which is ensured by the Court. It follows that in such a case it is for the national court, and if necessary, the Court of Justice to appraise the application of those provisions having regard to all the rules of Community law, including freedom of expression, as embodied in

[151] At that time this amount represented 1/9 of the Moldavian salary.

[152] C-260/89 Elliniki Radiophonia Tiléorassi AE and Others v Dimotiki Etairia Pliroforissis, 1991.

Article 10 ECHR, as a general principle of law the observance of which is ensured by the Court."
The result of this case was the expansion of the EU human rights. Later on this issue was tackled with article 51 of the Charter of Fundamental rights of the EU.

b) Regulating broadcasting

The right of information and freedom of expression as stated in article 10 ECHR is composed of freedom to acquire and publicize both information and ideas via broadcasting. Nonetheless, it is specified that "this article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises".
In *Groppera Radio*[153](the first case on electronic media, in 1990) the Court found no violation of those companies' right to rebroadcast Italian programs by Swiss cable network. The Court held that in the instant case the national authorities enforced their right to require to license broadcasting enterprises and did not affect the exercise of freedom of expression. In the Court's view the ban did not constitute a form of censorship. It was merely a measure against a station that could be *de facto* hold as a Swiss station, though it transmitted across the borders. Hence the Court decided that there was no infringement of the freedom of expression.
In contrary, in *Autronic*[154] the Court found a violation of article 10 ECHR. Autronic, a limited company, asked for permission to present at an exhibition a Soviet television program received by a telecommunications satellite. The State refused it because the Soviet authorities had not approved it. The Court ruled that it was the very nature of the broadcasts that was intended for public use, therefore there was no likelihood of obtaining secret information. Consequently there was a breach of the ECHR.
In November 1993, in *Informationsverein Lentia and others*[155] the Court held that there was a violation of the freedom of expression. In Austria a public

[153] Groppera Radio v. Switzerland, 1990.

[154] Autronic v. Switzerland, 1990.

[155] Informationsverein Lentia and others v. Austria, 1993.

monopoly system existed as far as broadcasting was concerned. Hence, the applicants were not allowed to set up a radio or television station. The Court stated that freedom of expression and pluralism are the cornerstones of democracy and that there was no pressing technological need to justify such restrictions. Therefore, the State was forced to allow new private stations to operate. In 2002 in *Informationsverein Lentia*[156] the applicant complained that in spite of the judgment delivered in 1993, it was still incapable of acquiring a cable broadcasting licence. The issue was finally solved in a friendly settlement.

Later on, in *Radio ABC* case,[157] the Court examined again the broadcasting monopoly in Austria. The Court noted "with satisfaction that Austria introduced legislation to ensure the fulfilment of its international obligations"

In *Tele 1 Privatfernsehgesellschaft mbH*[158] the State refused to a limited company a licence to set up a terrestrial television transmitter in the region of Vienna. The Court held that there had been an infringement of the right of freedom to impart information and ideas, since the national broadcasting corporation was the only to be granted a television broadcasting licence. There was no difference between the applicant's case and the Informationverein Lentia case. The State argued that Austria's topographic situation resulted in the scarcity of frequencies. Thus the frequencies were reserved for the ORF[159]. Nonetheless, the Government provided private broadcasters with a viable alternative in the Court's view, access to cable television.

In *VgT Verein gegen Tierfabriken*[160], a Swiss association concerning the protection of animals went before the Court because the State refused to broadcast a television advertisement due to its political character against industrial breeding of certain animals. The Court claimed that the ban's object on advertisements of political nature was to prevent financially strong groups from gaining a competitive advantage in politics. Nonetheless, the ban did not

[156] Informationsverein Lentia v. Austria, 2002.

[157] Radio ABC v. Austria, 1997.

[158] Tele 1 Privatfernsehgesellschaft mbH v. Austria, 2000.

[159] Österreichischer Rundfunk, the national public service broadcaster of Austria.

[160] VGgt Verein v. Tierfabriken, 2001.

apply to all media and, in the Court's view, did not meet a "pressing social need". Moreover, the applicant association did not constitute a powerful financial group which focused on retaining the independence of the broadcaster, influencing public opinion or endangering equality of opportunity between the different social forces; hence the Court's claim that the refusal had not been "necessary in a democratic society" and therefore violated article 10 of the Convention.

In *Demuth*[161] the Court found no infringement of the freedom of expression. Mr. Demuth requested a licence to broadcast a cable distributed television programme specialized in cars (including car accessories, traffic policies, tourism and environmental issues), which the State refused to grant on the ground of not fulfilling the conditions of the Radio and Television Act. However, the Government stated that it would provide *Car Tv* with a licence on condition that other elements would be included in the program as well. Consequently, the Court claimed that freedom of expression had not been violated.

c) Access to information

In *Leander*[162] the applicant claimed that the Swedish authorities should have disclosed a certain piece of information on him. To be more specific, the State had secretly assessed him as a risk of national security. The Court ruled that on this particular case there had been no infringement of article 10 ECHR. Later on, in *Gaskin*[163] there was found no violation of the freedom of expression according to the Court. The case concerned a local authority's rejection to disclose to Graham Gaskin a case record on when he had been kept as a minor in the authority's care. In *Guerra*[164] the Court held that the Convention and more specifically article 10 were not applicable. The applicants claimed that the State had failed to provide them with information

[161] Demuth v. Switzerland, 2002.

[162] Leander v. Sweden, 1987.

[163] Gaskin v. United Kingdom, 1989.

[164] Guerra and others v. Italy, 1998.

on the risks run or on what preparations should be made if an accident at the nearby chemical factory occurred. The applicants complained that although the factory had submitted an emergency plan to the relevant public service, they had not received such information. The Court stated that the public has the right to receive and access information, but this was not a burden to be placed on the State. Hence the Court found no violation of the freedom of expression.

d) Commercial statements

In *Markt Intern Verlag GmbH and Klaus Beermann*[165] the Court held that there had been no infringement of article 10 ECHR. Mark Intern, a publishing firm, had exercised dishonest practice according to Federal Court of Justice under the Unfair Competition Act, because he was repeating certain claims that were published in an information bulletin that disapproved the practices used by a mail-order firm. Taking into consideration that commercial information should be included in the scope of article 10, par. 1, which is not merely applied to specific information or ideas, the Court concluded that the Federal Court of Justice's restriction had not committed a violation of the freedom of expression.

In *Casado Coca* case[166] the Court examined again the applicability of the ECHR regarding advertising and found no violation of the tenth article. The State imposed a penalty on a lawyer as a result of him advertising his services. In most states there had been an inclination to soften the rules because the society had been constantly changing and the media was becoming more powerful. One can easily distinguish that this was an extremely complicated issue by the many regulations and approaches that were applied in the member states. The Court decided that the Bar authorities alone should deliver a judgment on whether to allow its members to advertise their professional services.

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[165] Markt Intern Verlag GmbH and Klaus Beermann v. the Federal Republic of Germany, 1989.

[166] Casado Coca v. Spain, 1994.

In *Jacubowski*[167] the Court found no violation of article 10 ECHR. Jakubowski designed a circular letter criticizing a press agency while planning to set up his own. The German courts had prohibited him from distributing the circular letter, but did not restrict his right of expression in any other way. Thus the Court concluded that the German courts had not infringed Jakubowski's right of freedom of expression.

In *Stambuk*[168], according to the Court, there was a violation of freedom of expression. An ophthalmologist was fined because he advertised his services by giving an interview to a newspaper about his new laser technique. The Court stressed that medical practitioners should be subjected to certain restrictions regarding advertising due to their duty of care. However, it concluded that this restraint had been outweighed by the right of the public to information noting that the doctor's main objective was to protect health.

In *Krone Verlag GmbH*[169] the Court found a violation of the article 10.

The case concerned an injunction that banned Krone Verlag GmbH from comparing its price list to another regional newspaper, except if other differences were presented to the consumer as well. The Court stated that the restraint had on one hand too far-reaching results and on the other hand that it was unjustified and disproportionate. Hence it concluded that the restriction was "too broad, impairing the very essence of price comparison".[170] Furthermore, it was a decision tough to implement.

e) Protection of the general interest

In *Handyside* case[171] the Court ruled that a restriction according to the Obscene Publications Act on Little Red School Book was in agreement with the exclusion in

article 10 par. 2 as far as safeguarding of the ethics is concerned. The applicant was the owner of the "Stage 1" publishing company and had

[167] Jacubowski v. Germany, 1994.

[168] Stambuk v. Germany, 2002.

[169] Krone Verlag GmbH & Co. KG v. Austria, 2003.

[170] Krone Verlag GmbH & Co. KG v. Austria, 2003.

[171] Handyside v. the United Kingdom, 1976.

obtained the rights of two authors under the name of "The Little Red Schoolbook". The book was published in 1971 in both European and non-European countries. Handyside extensively advertised the book via a press release and review copies that he had sent out. In this book there was a twenty-six page chapter in which Handyside claimed that the objective was to educate children on sex and contained a recommendation to children to use pornography.

Richard Handyside was accused that the book was inappropriate and corrupted children. He was convicted and the State imposed a £50 fine and made him to pay £110 costs. His appeal was rejected. In 1976 the Court claimed that the right of the freedom of expression is applicable not only to ideas and opinions that do not offend public opinion, but a broader scope applies because "such are the demands of pluralism, tolerance and broad-mindedness without which there is no democratic society". The Court stressed in this way the significance of freedom of expression in a democracy. Nevertheless, it found no violation of article 10, because it claimed that the regional court, which is in direct contact with the morals of their country, is in better position to decide on whether there is a necessity of this restraint. This is a classical example of the margin of appreciation granted to the states.

The *Glasenapp* and *Kosiek* case[172] concerned two civil servants that had been dismissed on the basis of disloyalty to the German Basic Law. The Court held that the applicants enjoyed the protection provided by article 10, but stated that the main matter of contention was the entry to the civil service, which the Convention did not recognize as a right. Hence no breach of article 10 could be found.

In *Müller and others,*[173] as we analyzed before, the Court ruled that the confiscation of works of art exhibited and the fine to the painter and other applicants for inappropriate publication were limitations of freedom of expression necessary in a democracy in order to protect the ethics.

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[172] Glasenapp v. the Federal Republic of German,1984, Kosiek v. the Federal Republic of Germany, 1984.

[173] Müller and others v. Switzerland, 1988.

Furthermore, it should be pinpointed that there was no age restriction to access. Thus there was no violation of article 10 in the Court's view.
The two following cases were analyzed before, however, due to their importance a short note is made. In *Open Door Counselling and Dublin Well Woman Centre*[174] the Court found a violation of article 10. The State had restricted the applicants to impart information on a possible abortion in the United Kingdom. The restraints were "prescribed by law" but the Court found them to be disproportionate.
In *Hadjianastassiou* case[175] regarding disclosing minor military secrets, the Court stated that there had been no breach of article 10. The Greek State had claimed that a transfer of mitary technology to a private company had taken place. The Court concluded that the right to freedom of expression is applicable to military personnel as well. Nonetheless, this right is not applicable to sensitive military information.
In *Otto-Preminger-Institut*[176] the Court claimed that the State, which had ordered to seize and confiscate a film[177] had not violated article 10. The objective of the measures was to prevent the citizens from being insulted concerning their religious beliefs. The Court held that both measures were proportionate to the aim pursued.
In *Piermont*[178] the Court decided that there had been an infringement of article 10 ECHR. The case regarded a German member of the European Parliament that had been expelled from Polynesia and restricted to re-enter Polynesia or enter New Caledonia. Mrs. Piermont had been invited by pro-independence politician and gave a speech during a demonstration. The expulsion had been ordered on grounds of not being discrete concerning French internal affairs. The Court claimed that there had been no balance between public interest and exercise of freedom of speech, thus the right to freedom of expression had been violated.

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[174] Open Door Counselling Ltd and Dublin Well Woman Centre Ltd v. Ireland, 1992.

[175] Hadjianastassiou v. Greece, 1992.

[176] Otto-Preminger-Institut v. Austria, 1994.

[177] Werner Schroeter film Das Liebeskonzil.

[178] Piermont v. France, 1995.

In *Vogt*[179] the Court found an infringement of article 10, regarding a teacher who was displaced for she was participating in political activities of the German Communist Party (DKP). Taking into consideration the severity of the consequence and the applier's behavioral attributes in her professional life, the Court stated that the dismissal had not been corresponding to the legitimate aim. Thus the Court concluded that the penalty could not be considered essential in a democratic society.

In *Grigoriades*[180] the Court claimed that article 10 had been violated. Grigoriadis had written a letter to a fellow reserve officer, for which he was convicted of insulting the army. The Court stated that article 10 is applicable to the army as well. On that ground the army had no right to apply laws to preclude from countermining of military discipline. Given that the remarks in Grigoriadis's letter were not intended to criticize any person in particular but aimed at the institution of army, the Court concluded that there was a violation of the freedom of expression.

In *Steel and others*[181] the Court stated that the demonstrations that had resulted in the applicants' arrest should be considered as an expression of their dissonance with specific activities. Thus they fell under article 10. In estimating the need to retain the applicants' freedom of expression, the Court considered in detail the facts and claimed that there had been no infringement of the freedom of expression in the case of two applicants. Physical impediment of legal activities could legitimate the measures taken. Nonetheless, the State's custody of the other three applicants succeeding a peaceful demonstration had not been legal and proportionate. On that ground, the Court found a violation of article 10 ECHR.

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[179] Vogt v. Germany, 1995.

[180] Grigoriades v. Greece, 1997.

[181] Steel and others v. United Kingdom, 1998, http://sim.law.uu.nl/sim/caselaw/Hof.nsf/e4ca7ef017f8c045c1256849004787f5/e03584e34fdd8dddc12566900031be54?OpenDocument, last visit: 10/5/2012.

In *Sidabras and Dziautas v. Lithuania*[182] the Court claimed that dismissing two civil servants, Sidabras and Dziautas, who were former KGB officers, and rejecting recruiting them did not violate freedom of expression. In this case the denial to recruit the applicants constituted no "amount to a restriction on their ability to express their views or opinions". Thus the article 10 had not been violated.

f) Protection of other individual rights

In *Fuentes Bobo*[183] the Court stated that there had been an infringement of article 10, regarding the fact that the Spanish Television Company (TVE) laid off the applicant due to insulting remarks in two radio programs about the station's management. The applicant, an employee of TVE since 1971, had his program terminated in 1992. However TVE did not fill any other post with Fuentes Bobo. Fuentes Bobo had participated in a demonstration against mismanagement of TVE which was organized by the staff and took place in 1993. Furthermore, he had contributed to a provocative article towards misdirection of TVE in a newspaper called "Diario 16". In November 1993 he was sent a letter that informed him on where to report, but was not offered a post. He then got suspended without pay for 16 days and soon after for 60 days, due to a document that he circulated among his colleagues under the same topic, that of mismanagement. Fuentes Bobo appealed to the Madrid Labour Court; his appeal was dismissed. The Madrid High Court overturned this decision on the grounds that the consistence of court decisions should be pursued and that his 276 colleagues who supported him had not been imposed any penalty. Meanwhile the applicant had made remarks that were considered insulting about the way TVE had acted, resulting in his dismissal

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[182] Sidabras and Dziautas v. Lithuania, 2004, http://ucl.academia.edu/VirginiaMantouvalou/Papers/1223214/Work_and_pr... s_and_Dziautas_v_Lithuania, last visit: 9/5/2012.

[183] Fuentes Bobo v. Spain, 2000, http://www.echr.coe.int/NR/rdonlyres/1623... 4F12-9B1C-0EF6E3B2CB27/0/RAPPORT_RECHERCHE_Positive_obligations_under_A..., http://merlin.obs.coe.int/iris/2000/4/article1.en.html, last visit: 9/5/2012.

in April 1994. The applicant appealed and the Madrid Labour Court stated that due to a procedural defect his laying off was not lawfull. Nonetheless, the Madrid High Court held that the dismissal was lawful, a thesis that according to the Constitutional Court was correct, because in its view there had been no infringement of his right to freedom of expression.

The Court stressed the fact that article 10 of the ECHR was applicable to all employer-employee relationships and that the State was positively obliged to shield the freedom of expression. Moreover, the Court pinpointed that article 10 of the Convention did not protect unrestricted freedom of expression "even in press reports on serious questions of general interest".

Given that the applicant had called specific managers "leeches", their reputation was probably damaged and warranted punishment. Nonetheless, the remarks had been constituent of an intense public debate regarding management of public television. Moreover, the managers had not filed a defamation suit. Hence the applicant's dismissal without compensation was an extremely severe constituting an infringement of article 10 of the Convention.

In *Constantinescu*[184] the Court found no violation of the right to freedom of expression. The applicant, the leader of a teachers' trade union, had called tree teachers, who were former leaders of the trade union, "delapidatori", in other words thieves. Those three members of the previous managing system of the trade union had been accused of not returning money that was possession of the trade union after new leaders had been elected. The Bucharest Court of First Instance found Mihail Constantinescu not guilty of defamation. In spite of that, the Bucharest District Court claimed that he aimed to defame the prosecutors in front of journalists, for he should have been cognizant at the material time that they had already been acquitted. Thus he was convicted of defaming them.

Constantinescu complained that his right to freedom of expression had been restricted. He claimed that he was not aware that the three teachers had been

[184] Constantinescu v. Romania, 2000, http://sim.law.uu.nl/sim/caselaw/Hof.nsf/e4ca7ef017f8c045c1256849004787f5/104fc67957b0d12ec125690d00336e89?OpenDocument, last visit: 9/5/2012.

found not guilty and that he was not permitted to establish the validity of his claims. The Court observed that considering conviction of defamation as violation of the right to freedom of expression was typical.
Hence it was essential to analyze whether law prescribed the infringement, the objective was lawful and was "necessary in a democratic society". Law safeguarded the right to protection of the reputation; hence there had been a legitimate aim that was achieved. The Court had to decide on whether the violation of the right to freedom of expression was proportionate and whether the regional court had justified it pertinently and adequately. The Court took into consideration only the remarks made towards the three teachers and not towards the police (that they did not wish to accomplish the investigation), because in the Court's view the violation of the right to freedom of speech applied only in the first case. Notwithstanding the applicant's comments were part of a public debate of public interest, the freedom of expression was restricted by certain limitations. Despite the fact that the applicant was the leader of a trade-union, he was expected to respect those limits in favor of the right of the others to protection of their reputation. Moreover, even if he was not aware of the decision held by the national authorities, he should have remained within those specific limits, as there is the right to the presumption of innocence. Since the three teachers were not convicted and the applicant could have criticized them avoiding the word "depilatory", the Court concluded that there had been no breach of article 10.
In *Jerusalem*[185] the Court found a violation of the right to freedom of expression guaranteed by article 10. The applicant delivered a speech on the municipality granting of subsidies to an association regarding parents whose children had taken part in sects in the Vienna Municipal Council. During her speech she mentioned two associations, VPM and IPM, as of "totalitarian character". The two associations managed to obtain an injunction preventing the applicant to repeat her remark and ordering her to retract it. The national

[185] Jerusalem v. Austria, 2001.
http://www.iidh.ed.cr/comunidades/libertadexpresion/docs/le_europeo/jerusalem%20vs%20austria%202001.htm, last visit: 12/5/2012.
http://sim.law.uu.nl/sim/caselaw/Hof.nsf/233813e697620022c1256864005232b7/5386a3ef41726da7c1256a01003f9c85?OpenDocument, last visit: 12/5/2012.

authorities upheld the injunction, because the statement that IPM and VPM were sects was not in the court's view a value judgement but a statement of fact found to be untrue. Furthermore, the retraction was to be published in Austrian newspapers. The applicant then appealed in 1993 to the Vienna Court of Appeal, which stated that the restriction of repetition should be maintained contrary to the retraction. In 1994 the Supreme Court confirmed the previous State views.

The Court claimed that the injunction violated the applicant's right to freedom of speech. Furthermore, the Court noted that the applicant was a politician, thus freedom of speech was essential for her. As IPM and VPM were involved with matters of public interest, they were found to be extremely intolerant towards the applicant. The Court reversely to national authorities considered the statement to be value judgment instead of fact and examined if there was evidence underlying. The applicant had provided the regional courts with evidence that the two associations at issue were sects. Notwithstanding the national courts had claimed that the evidence offered supported the view of IPM and VPM as sects and not as that referent she had defined. Nonetheless, the Court held that the national authorities did not take into consideration the main issue of the debate and that the discrimination was counterfeit.

Hence the Court concluded that there had been an interference with the exercise of the right to freedom of speech.

In *Appleby*[186] the Court found no violation of article 10 of the Convention. The applicants alleged that they were prohibited from collecting signatures for a petition to persuade the council to decline the project. This was held in a shopping mall owned by Postel, a private company that excluded the applicants from its property. The applicants alleged that they were not allowed to share information and ideas in what had become the effective town centre. The Court claimed that although the right to freedom of expression was significant, it could under no circumstances surpass the property rights of the

[186] Appleby and others v. the United Kingdom, 2003. http://sim.law.uu.nl/sim/caselaw/Hof.nsf/233813e697620022c1256864005232b7/8c78b7abee37600841256d20004cfb51?OpenDocument last visit: 12/5/2012, http://lexisweb.co.uk/cases/2003/may/appleby-and-others-v-united-kingdom, last visit: 12/5/2012.

owner of Postel. Furthermore, in the Court's view the prohibition had not restricted entirely the applicants. Hence no infringement of the right to freedom of expression was found.

g) Maintaining the authority and impartiality of the judiciary

In *Schöpfer*[187] the Court claimed that the disciplinary penalty that his Bar Association had imposed on him as a consequence of remarks he had made at a press conference regarding his client's arrest did not infringe article 10 of the ECHR. Schöpfer had organized a press conference, at which he expressed in public his critique for the administration of justice as well as the quality of the arrest of his client. Furthermore, he was accused of violating professional ethics as he generally accused the district, for which he had not complained either Prosecutor. The Court held that restrictions on the behavior of lawyers are common ground due to their specific part as intermediaries between justice and public opinion. In the Court's view, lawyers are required to affirm the public confidence in the judicial regime.
Lawyers are of course eligible to the right to freedom of expression, which can be used for making remarks on the administration of justice. Notwithstanding, these comments are required to stay within certain limits. An even balance should be sought between public's right to acquire information, demand for appropriate administration of justice and the gravitas of the law profession. The Court stated that the applicant, a lawyer himself, had publicly alleged criminal procedure ahead a criminal court stating that it was "a last resort". Moreover, he filed an appeal to the Lucerne Court of Appeal after the press conference had been held. Given the modesty of the disciplinary penalty that had been imposed on the applicant, the Court concluded that, the punishment had not been disproportionate regarding the legitimate aim and was claimed

[187] Schöpfer v. Switzerland, 1998.
http://sim.law.uu.nl/sim/caselaw/Hof.nsf/e4ca7ef017f8c045c1256849004787f5/88468a18bc9491c1c1256640004c391d?OpenDocument,
http://www.article19.org/resources.php/resource/2695/en/schopfer-v.-switzerland, last visit: 12/5/2012.

to be essential in a democratic society therefore no infringement of article 10 had been committed.

In *Kyprianou*[188] the court found a violation of article 10. Kyprianou, an advocate, was defending a client at a murder trial. He complained that while cross-examining a witness of the prosecution, he was disrupted and inquired for leave to withdraw, which was not permitted to him. He then complained that members of the court had been passing "ravasakia" (the word stands for short notes of an unpleasant quality or love letters) to each other. The applicant was given the chance to retract or state the reasons for which he should not be punished but he rejected both alternatives. The court claimed that Kyprianou's tone constituted a contempt of court and condemned him to five days' imprisonment. He served the penalty immediately. He appealed unsuccessfully.

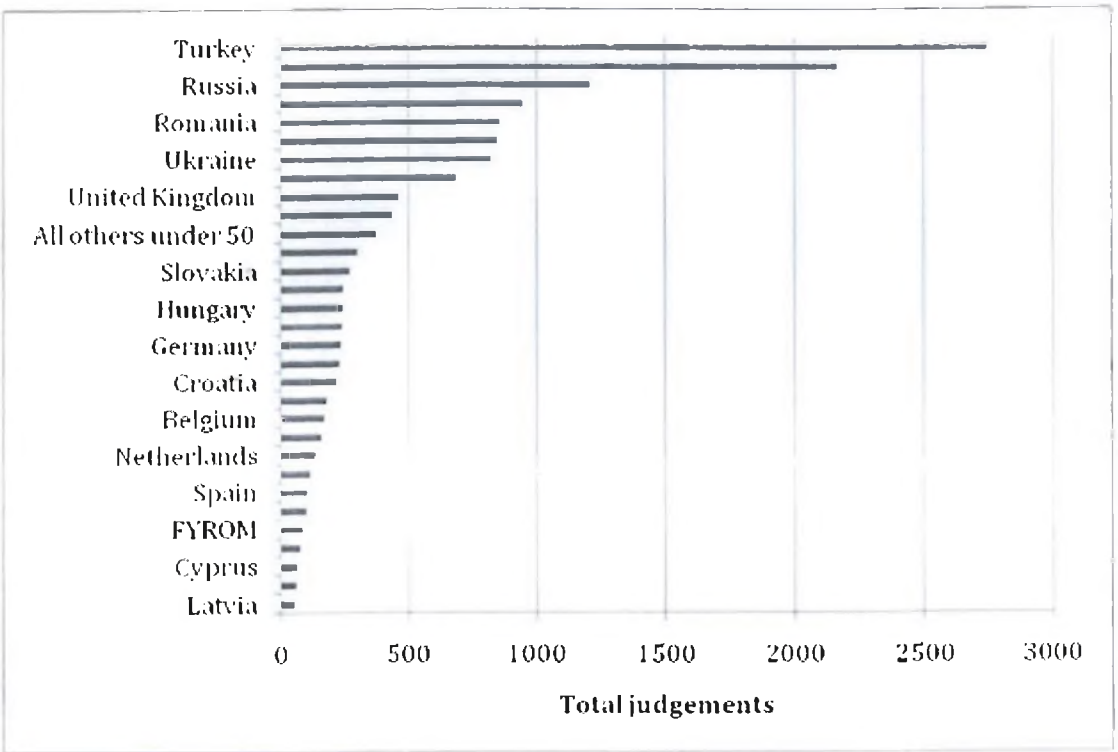
The Court held that it should be examined whether the appropriate balance between the right to freedom of expression and the dignity of the court was achieved. The penalty imposed was disproportionately harsh given the aims pursued and able to have a "chilling effect" on lawyers in suchlike cases. Moreover, the prison sentence had been immediately enforced. Thus the Court concluded that there had been a violation of the right to freedom of expression.

2) Turkey, a problematic case

Special reference should be made for Turkey because it has been criticized many times in view of violations against human rights. Indeed, as we can detect from the statistics below, Turkey is the first country with cases linked to it, both concerning in general the ECHR (figure 1) and more concretely as far as freedom of expression is concerned (figure 2).

[188] Kyprianou v. Cyprus, 2005.
http://sim.law.uu.nl/sim/caselaw/Hof.nsf/233813e697620022c1256864005232b7/753b15ba74dcf519c12570d5005130a0?OpenDocument,
https://wcd.coe.int/ViewDoc.jsp?id=830869&Site=COE last visit 12/5/2012.

Figure 1: Total ECHR judgements by country 1959-2011[189]

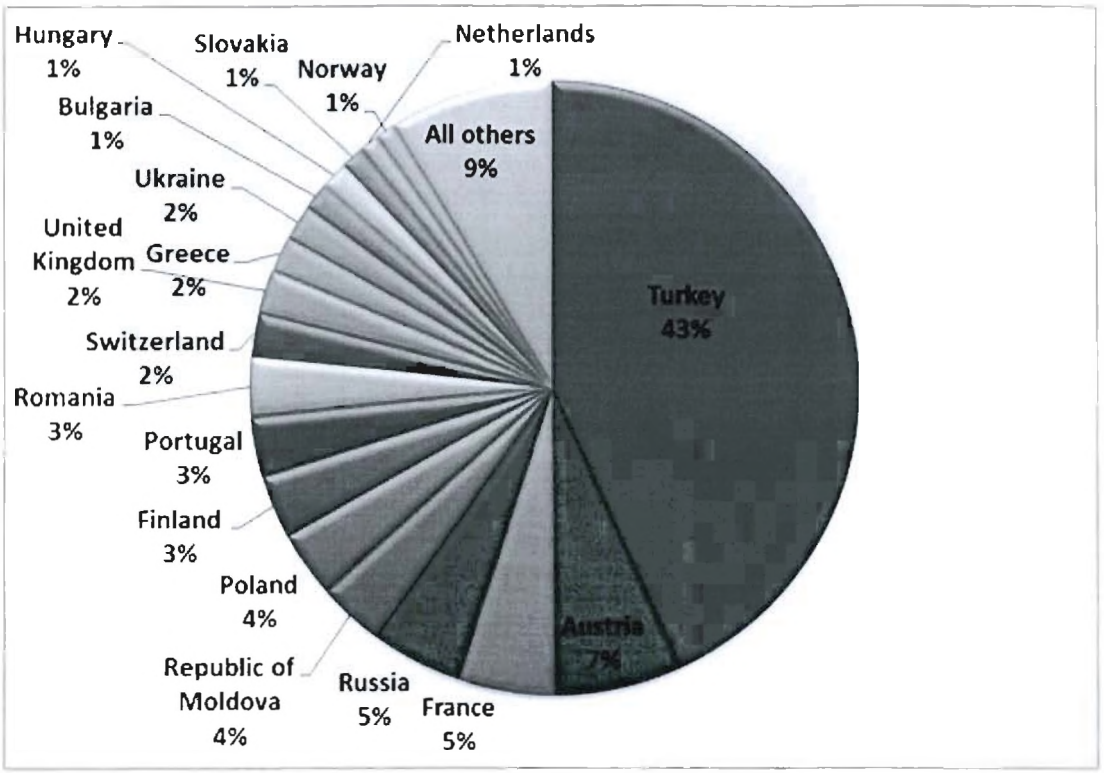


This figure illustrates the number of total judgments delivered by the ECtHR judges that were related to each country for the period of 1959-2011. It can be easily deducted that Turkey holds the very first place on issues that were either perceived as violations or not of the Convention. What should be emphasised is the great difference among Turkey and the rest countries placing it in the first place with huge distance from the other countries. However, these conclusions are also likewise misleading; other countries have equivalent violation records. Pending cases are another issue, for instance on the side of Russia or other countries, pending cases may be equivalent or more to those of Turkey's. The period of time that a country takes to implement the judgements may also vary among the different states, hence being greater in length compared to Turkey. Nonetheless, what actually differentiates Turkey, is that it violates the common standards on almost every sector of its public policy.[190]

[189] http://blogs.lse.ac.uk/europpblog/2012/03/14/turkey-echr/, last visit 10/5/2012.

[190] http://blogs.lse.ac.uk/europpblog/2012/03/14/turkey-echr/, last visit 10/5/2012.

Figure 2: ECHR cases by country on Freedom of Expression 1959-2011[191]



This figure is totally related to article 10 of the ECHR. It illustrates that a percentage of more than 40% is covered by Turkey since its legal system does not provide adequate protection on the freedom of expression.
As far as accession to the European Union is concerned, this country has been closely observed on this issue. The European Union governed by political objectives, on top of the economic ones, looks forward to the convergence of policies not only by member states, but also by the candidate countries[192]. The need for democratization and thus the existence of states that respect fundamental rights arose gradually due to - among other factors - the collapse of communism in 1990's and the need for hosting new countries and new ideology.

[191] http://blogs.lse.ac.uk/europpblog/2012/03/14/turkey-echr/, last visit 10/5/2012.

[192] Frank Schimmelfennig, The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Ennlargement of the European Union, International Organization, Vol. 55, No. 1, Winter 2001, p. 47.

Turkey is a member in most human rights treaties[193]. Despite typically meeting requirements, it is generally accepted that the Turkish entry in the European Union is hampered by the inadequate protection of civil and human rights[194].

In numbers: in 553 decisions, the Court of Human Rights (ECtHR) ruled that Turkey had violated the European Convention on Human Rights. In particular, "from October 2009, a total of 5.728 new applications have been made to the ECtHR. Most of them concern the right to a fair trial and protection of property rights. Since September 2010, 16.093 cases remain pending before the European Court of Human Rights concerning Turkey. The constitutional amendment establishing the right to submit individual applications to the Constitutional Court is an important step destined to reduce the number of applications to the ECtHR."[195]

Actually, since 1987,[196] individuals may appeal against Turkey in the Strasbourg Court[197], and Turkey in turn, during 1990, recognized

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[193] Some of the international conventions that Turkey has ratified are: the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Indeed in the last convention, Turkey was the first country to ratify, http://www.unhchr.ch/tbs/doc.nsf/0/e00415d0170ee8a5c1256b3a0051eb22/$FILE/G0144925.pdf last visit: 4/2/2012.

[194] Harun Arikan, Turkey and the EU, Ashgate, 2003, pg. 103-104.

[195] http://ec.europa.eu/enlargement/pdf/turkey/screening_reports/screening_report_12_tr_internet_en.pdf
last visit on 4/2/2012.

[196] On 29 January 1987 Turkey became the nineteenth member of the Council of Europe and with a statement under art. 25 of the Convention on Human Rights recognized the jurisdiction of the Court of Human Rights. This participation was the result of harsh criticism for the protection of human rights, especially after the 1980 coup d' état. Indeed, five countries applied to the Court of Human Rights against the Turkish military brutality the latter enforced when it came to "terrorists": France, Norway, Denmark, Sweden and Netherlands v. Turkey, Applications 9940-9944/1982. Iain Cameron, Turkey and Article 25 of the European Convention on Human Rights, the International and Comparative Law Quarterly, Vol. 37, Oct. 1988, p. 887.

the compulsory jurisdiction of the Court. However, Turkey has been the only country, which was convicted of obstructing the submission of complaints to the European Commission of Human Rights.

In 1997 the government created a special body for human rights; the High Coordinating Committee for Human Rights, the role of which was to coordinate, monitor and facilitate actions that promote human rights. An independent mediator was appointed, whose main task was the improvement of the general terms of human rights protection.

With regard to civil and political rights, the reality remains problematic since tortures as well as disappearances are regularly recorded[198]. In particular, despite frequent statements by the government to stop torture, this is not the case. By contrast, several incidents are recorded against persons in police stations before they are brought to justice, incidents which are deployed mainly due to lack of discipline and control.

In addition, the conditions in Turkish prisons are by far below the standards, since they are densely populated, lacking primary medical care and often resulting in prisoners riots[199].

In the late 1990's, the Turkish Grand National Assembly adopted a law reducing the duration of detention[200]. The new deadlines set by law were again longer than what usually occurred in other developed countries.

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[197] Some statistics in the 1990's: the applications of Turkish citizens to the European Commission of Human Rights in 1995 were 258, 612 in 1996 and 427 in 1997. The Court ruled on 5 Turkish cases in 1996, 8 in 1997 and 9 in 1998. http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/turkey_en.pdf, last visit on 4/2/2012.

[198] TIHV, an organization to seek redress for victims of torture had recorded in the decade 1990-2001 14.500 cases of torture. Kerim Yildiz, Juliet Mcdermott, Torture in Turkey: the ongoing practice of torture and ill-treatment, Kurdish human right project, 2004, pg. 182.

[199] Murat Sevinç, Hunger Strikes in Turkey, Human Rights' Quarterly, Vol. 30 No. 3, Aug. 2008, pg. 659.

[200] Detainees must be brought before a court within four days instead of the previous period of fourteen. In areas under a state of emergency the period was reduced from thirty to ten days. http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/turkey_en.pdf, last visit on 4/2/2012. Eventually, the ceiling in temporary custody was reduced to 24 hours. Harun Arikan, ibid, p. 124.

Turkey ratified the "Convention on the Elimination of All Forms of Discrimination against Women"[201]. However, although domestic violence[202] is widespread, it is not treated with special guarantees.
In addition, the death penalty, though permitted by law, has not been practiced since 1984. Turkey had not ratified the Sixth Protocol of the ECHR, on the abolition of death penalty. Hence, following pressure and in order to avoid amending the Constitution, (which was nonetheless later amended), Turkey changed the corresponding section of the Turkish Criminal Code, subsequently abolishing the death penalty, except for the cases of "crimes during war, imminent war or terrorist attack"[203].
In relation to economic, social and cultural rights, the freedom of association and assembly which exists bears some derogation[204] regarding police and military personnel. Another social human right, the right to

[201] UN Convention on the Rights of Women and equivalent for the Rights of the Child (2000), Harun Arikan, ibid, p. 139.

[202] Lisa Hajjar, Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis, Law & Social Inquiry, Vol. 29, No. 1, Winter, 2004, pg. 1-5.

[203] The last part was maintained because the aim was to execute kurdist leader Ocalan, which was viewed as a terrorist. Ali Carkoglu, Barry Rubin, Turkey and the European Union, domestic politics, economic integration and International Dynamics, Frank Cass edition, 2003, p. 118. Specifically: In October 2001 art. 38 of the Turkish Constitution was amended. With Law 4771 of August 9, 2002, the Turkish Grand National Assembly decided, inter alia, the abolition of the death penalty in peacetime (i.e. excluding time of war or imminent threat of war). As a result of the amendments, due to acts of terrorism the offender was subject to life imprisonment. By decision of 3 October 2002, the Court of Ankara commuted the death sentence on Ocalan to life imprisonment. The Court had held that the offenses the Kurdish leader had been accused of had been committed in peacetime and constituted terrorist acts. The political party Nationalist Action (MHP - Milliyetçi Hareket Partisi), asked the Constitutional Court to order the annulment of certain provisions of Act No. 4771, including the abolition of the death penalty in peacetime for persons accused of terrorist acts. The Constitutional Court dismissed the appeal by decision of 27 December 2002, application 46221/99, and decision of May 12, 2005, European Court of Human Rights.

[204] "Unions cannot, for example, invite foreign associations in Turkey ... or organize any activities outside their premises if they have not received prior permission of the authorities." http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/turkey_en.pdf, last visit on 05.12.2011.

strike, is subject to limitations; however, no provision for the aforementioned right exists when it comes to civil servants, who do not retain even the right to form trade unions.

Another problem arises in connection with labour law, which remains inefficient. Unfair dismissal and the lack of unemployment allowance are two major drawbacks in the Turkish labour economy[205]. Children labour as well has a prominent place in underground economy.

What is more, the army used to play for decades an active role on implementing the principle of secularism, due to the pressures it exercised on a governmental level on the one hand, and on the other hand, by excluding from its ranks people who are suspected to participate in activities incompatible with its principles. However, it may be argued that steps are being made towards what Ataturk remarked: "Our colleagues in the army should no longer dabble in politics. They should direct all their efforts to strengthening the army instead."[206]

With regard now to religious freedom, religious education (Sunni-Islam) in public primary education is compulsory[207]. Under the Treaty of Lausanne the non-Muslim minorities are excluded from Muslim religious tutorials. Nonetheless, despite the theoretical freedom of exercising any religion, in practice this is subjected to bureaucratic constraints, namely the approval of certain religious activities and the recognition of the status of a religious minority as such.[208]

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[205] Bakirci K. Unfair Dismissal in Turkish Employment Law: The Evolving Nature of the Employment Relationship: Protecting Workers from Unjust Dismissal Versus Safeguarding Employer Prerogatives, Employee Responsibilities and Rights Journal, Volume 16, Number 2, June 2004, pp. 49-69.

[206] In 1909 addressing to Young Turks. http://www.economist.com/node/15505946, last visit: 10/2/2012.

[207] In October 2007, ECHR decided that teachers in public schools do not give an overview of religions but instead they only communicate certain guiding principles of the Muslim faith. The Court requested Turkey to act its education system in accordance with Article 2 of Protocol 1 ECHR, which had not yet implementated in 2010, http://ec.europa.eu/enlargement/pdf/turkey/screening_reports/screening_report_12_tr_internet_en.pdf,last visit on 2/2/2012.

[208] For instance, the Assyrians were not recognized as a religious minority.

More specifically, when it comes to freedom of expression, the latter is not fully guaranteed. The narrow *stricto sensu* interpretation of the Constitution and other protective provisions of the rule of unity, territorial integrity and respect for the formal state institutions, criminalize "elected politicians, journalists, writers, trade unionists or workers in NGO statements, public speeches, published articles or books that would be acceptable to Member States."[209]

The private media maintain in general freedom of speech, but there is a high rate of self-censorship at the very birth of the information owed to the known severity of the constitutional provisions[210].

A very important issue is the Kurdish question, a region that Turkey applies political rather than military solutions and constantly violates the rights of minorities, of which it does not recognize the legal existence[211]. Main cause of the problem is the identification of nation and state from the Turkish side. Indeed, this geographical area is named under an emergency status, which entails that administrative actions or operation forces may not be subjected to judicial review. The problem of Turkey is the lack of "self-restraint" in fighting terrorism in the Southeast region whichin there should be greater efforts to strengthen the rule of law and protection of human rights[212].

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[209] On January 1, 1998, 91 journalists were in prison in Turkey, according to "Reporters without Borders". http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/turkey_en.pdf, last visit on 7/4/2012. In May 1998, the President of the Turkish Human Rights Association, Akin Birdal, was a victim of attempted murder by a nationalist organization.

[210] For example, media coverage of the Kurdish issue could not become part of the agenda. Even in 2011, the Kurdish issue remained unresolved. http://ec.europa.eu/enlargement/pdf/turkey/screening_reports/screening_report_12_tr_internet_en.pdf, last visit on 7/4/2012.

[211] Turkey acknowledges and accepts only non-Muslim minorities as defined by the Lausanne Treaty, namely the Armenians, Greeks and Jews, not the Kurds, who are Muslims and enjoy - in Turkey's view- a full citizen status. Ali Carkoglu, Barry Rubin, Turkey and the European Union, domestic politics, economic integration and International Dynamics, Frank Cass edition, 2003, pg. 116.

[212] Harun Arikan, ibid, pg. 113.

Additionally, radio and television broadcasting in any language other than the Turkish was forbidden, until 1991. During that year, the law on "Publications in languages other than Turkish" achieved the possibility of publishing material in foreign languages, including Kurdish.

Another violation of human and political rights is the Armenian genocide (1915-1917). Thousands of Armenians were killed under the command of Turkish authorities, whereas Turkey argues[213] that this incident was the result of civil war, disease and hunger. Europe, however, became aware of this fact by Armenians that survived and relocated mainly in France and Germany. Indeed, France passed a bill criminalizing the denial of Armenian genocide[214].

It should be highlighted the case of Nobel laureate Orhan Pamuk[215], who was accused of publicly defaming Turkey, shortly after his statements in a Swiss magazine on nationalism and fascism in Turkey, noting that thirty thousand Kurds and one million Armenians were murdered. In other words, in Turkish law any form of anti-patriotism[216] was penalized even in 2006.

Another problem relating to minorities is the issue of Cyprus; this significant topic describes the part of Cyprus which was occupied by Turkey since 1974 and maintains under military forces[217]. In 1983, this part of the island declared

[213] Julio Crespo MacLennan, The EU-Turkey Negotiations: Between the Siege of Vienna and the Reconquest of Constantinople, Constatine Arvanitopoulos editor, Turkey's accession to the European Union, an unusual candidacy, Springer, 2009, pp. 26-27.

[214] The French parliament submitted this bill in 2006 which was dropped by the Senate in 2011. The denial of the Armenian genocide is considered however a crime in Switzerland.

[215] Pamuk case is not an isolated one. Many other writers, human rights activists or even politician have been judged on the grounds of criminal provisions related to insult, http://www.hrw.org/news/2005/09/28/turkey-case-against-novelist-threatens-freedom-expression, last visit: 2/3/2012.

[216] Despite the changes in the Turkish Penal Code in 2003, there were still articles criminalizing any infringement of the President, of the flag, Marcie J. Patton, "Turkishness" and state institutions, Turkey's Tug of War, Middle East Report, No. 239, summer 2006, p. 43.

[217] About 40,000 soldiers currently converting Cyprus as one of the most militarized areas in the world, Ronald J. Fisher, Cyprus: The Failure of Mediation and the Escalation of an Identity-Based Conflict to an Adversarial Impasse, Journal of Peace Research, Vol. 38, No. 3, May 2001, p. 311.

itself as an independent republic, nonetheless it not recognized by the international community, with the exception of Turkey.
Both the occupation and the "independent state" have been convicted through a series of UN resolutions and have been characterized as unacceptable.[218] On January 27, 1997, Mr Denktash and the Turkish President Demirel issued a joint statement, which "denounced the European Union's decision to open accession negotiations with Cyprus as a" historic mistake" and concluded that "any step taken by the Greek Cypriot administration on the path of unilateral EU membership will accelerate the integration process between the Turkish Republic of Northern Party (TRNC) and Turkey."
Then, Turkey and occupied Cyprus joined forces by establishing a Board, which would take economic measures, on the one hand, and the necessary security, defense and foreign policy measures on the other hand.
The case of Cyprus against Turkey about missing persons and restrictions of the property rights[219] of Greek Cypriots living permanently in the occupied part of Cyprus remains unresolved, since the Committee of Ministers abstained from reaching to a conclusion, until December 2010.
Lastly, Turkish measures are incompatible in any case, with international law as reflected in UN resolutions. The European Commission holds that Turkey, as guarantor of the Turkish Cypriot community should seek to achieve a just and fair settlement of the issue, in line with UN resolutions, towards the establishment of a bi-zonal and bi-communal federation.
Whereas most of the times there are individual applicants that file complaints before the ECtHR, in cases where a State wants to add political leverage on a litigation or public policy, it brings a case against another State. One example of the rare Inter-State complaints is the Cypriot one.[220] Among the cases of violation of the right of property and soon, there are cases concerning the

[218] For Resolutions adopted by the Security Council on Cyprus issue: http://www.un.int/cyprus/resolut.htm last visit: 10/2/2012.

[219] Loizidou v Turkey, 1995.

[220] Steven Greer, The European Convention on Human Rights, Achievements, Problems and Prospects, Cambridge press, 2004, pg. 25-28.

freedom of expression. In *Cyprus v. Turkey*[221] the applicant alleged interference via a vetting process for primary school textbooks and retains on the dissemination of Greek-language newspapers. Moreover Cyprus maintained that the competent authorities denied safeguarding the Greek Cypriot political party's right to freedom of expression. Concerning the first assertation the Court stated that the Turkish Cypriot State's rejecting of the content of school textbooks earlier than their publishment constituted an infringement of article 10. Accordant to Turkey the aim the vetting process was to distinguish any threats to the relations of Greek Cypriots with Turkish Cypriots. In spite of this, the Court concluded that the government had in reality one-sidedly censored numerous textbooks of harmless quality. Hence this censoring contravened the right to freedom of information. Regarding the other two accusations, the Court held that there had been no breach of article 10 ECHR.

The Court has stated on numerous cases[222] regarding measures taken by the Turkish State, according to the criminal code or the Prevention of Terrorism Act, for dispersal of material including speeches, publications and leaflets on infringement of freedom of expression and the issues in south-east Turkey. The Court claimed that "there is little scope under article 10 §2 of the Convention for restrictions on political speech" and that the boundaries of tolerable criticism were wider as far as the government was concerned than compared to those of a citizen or a politician. In case, however, of incitation to ferocity and hate, there were two concepts of the margin of appreciation; the court has used the doctrine in favor of the State. In some cases the Court claimed that the violative statements did not cause violence or hatred, and

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[221] Cyprus v. Turkey, 2001, http://sim.law.uu.nl/sim/caselaw/Hof.nsf/1d4d0dd240bfee7ec12568490035df05/636862e7f2911c42c1256a490031e2f2?OpenDocument

[222] Ibrahim Aksoy v. Turkey, 2000; Emire Eren Keskin v. Turkey, 2005; Karkın v. Turkey, 2003; Kizilyaprak v. Turkey, 2003; Zarakolu and Belge Uluslararası Yayıncılık v. Turkey, 2004; Doaner v. Turkey, 2004; Odaba v. Turkey, 2004; Perinçek v. Turkey, 2005; Han v. Turkey, 2005; Veysel Turhan v. Turkey, 2005; Osman Özçelik and others v. Turkey, 2005; Yüksel (Geyik) v. Turkey, 2005; Fikret Sahin v. Turkey, 2005.

that the infringements of freedom of expression were disproportionate to the legitimate aims and in interference of article 10 ECHR.

Another example of a Turkish violation of freedom of expression that depicted other rights' violations is the *Alinak* case[223] the Court stated that there had been an infringement of article 10, regarding the seizure of a book classified as fiction, which described tortures to south-east villagers perpetrated by the security. First of all, the Court noticed that the book was a novel based on facts. Despite the fact that specific events were not presented with objectivity but focused on the ill-treatment, nowhere in the book were the real names of the officers disclosed. The tortures that the villagers were subjected to were depicted in such a detailed way, that it was almost inevitable for the reader not to feel anger and hatred. Consequently, the book had been accused of inciting violence and hatred. However, the narrow target group that would be affected by this piece of art was incomparable with any incitation to violence by the mass media, resulting in this way in a minor impact on public order. Furthermore, freedom of artistic expression was guaranteed under article 10, for artistic expression stimulates an exchange of ideas, the cornerstone of a democratic society. Hence the Court concluded that there had been an interference with the artist's exercise of his right to freedom of expression.

In December 2004, the Summit of Heads of State and Government stated that Turkey sufficiently fulfills the political criteria - among them human rights' protection as well - and decided to subsequently open accession negotiations with it in October 2005. However, despite its official launch in 2005 the accession negotiations were suspended in December 2006, as it was found that Turkey does not apply to Cyprus the Additional Protocol to the Ankara Agreement.

In December 2009, the Turkish Constitutional Court unanimously dissolved the party of Democratic Society (DTP), and prohibited in 37 States to participate in party politics for five years. This decision is a regression and an obstacle to government efforts towards democratization. Moreover, the government secret protocol on security, public order and assistance units

[223] Alinak v. Turkey, 2005.

(EMASYA) allows military operations without the consent of the political authorities.

In conclusion, Turkey has not yet been able to join the European Union, as the gradual change in domestic structures is time consuming. Certainly, a great progress has been made in relation to human rights' protection, nevertheless there is still to be done in order to catch up with the developed states.

Conclusion

We have examined the freedom of expression not only from a theoretical point of view, but more importantly through a case-law study. This choice may provide the following results:

Firstly, cases usually reflect historical "traumas" in each state. For instance, Turkish cases for violation of the freedom of expression are linked to the Kurdish question or to religion issues, whereas in the United Kingdom cases are related to secret intelligence, and again Austria is concerned about Nazi issues, racism or xenophobia.

Secondly, expressing oneself with ideas or information is often used as a means in order to defend values such as human rights, health or environment. The Court has through its judgements safeguarded press publications and statements that contributed to public debate and pluralism.

Lastly, the ultimate purpose is democracy. This may be attained through exempting statements, ideas and information from illegitimate state interference. Toward that direction, the Court developed a well-established case law that becomes a pioneer for national states' legal order. The paradox concerning this freedom is that although it is promoted within a democratic environment, it is also restricted by the latter since legitimate restrictions of the freedom of expression may only take place in such one.

One of the reasons for the states to abide by article 10 ECHR is the just satisfaction[224] states have to pay, as a measure of imposing compliance, to applicants and future imitators of them in future occasions. Owing to that, freedom of expression, as viewed from national law, practice, legislators, judges and police has been increasingly incorporated into domestic life mutually promoting awareness of the Court's decisions and contributing to this freedom in reverse.

Nonetheless, there is a constant tension between freedom of the press and freedom of expression, which is severely augmented by the struggle between public and private interests. This tension had caused a slight impediment in the development of a well protecting case law of the Court. However, should

[224] Art. 41 ECHR.

the Court effectively guarantee such a right, it results in enhancing tolerance and respect for human rights. Its role is that of a perturbing and provocative advocate where mere superficial protection of the freedom of expression does not suffices.

The future challenge to be seen is a twofold one; First of all, we anticipate the EU accession to the ECHR, which might entail significant changes, on the reasoning of the ECtHR on the one hand, since it will have to face another organization subjected now to the ECtHR and its jurisprudence. On the other hand, the Court of the European Union should be more strict when it scrutinizes cases that approach human rights. Therefore, the protection of human rights is expected to be greater.

Second future challenge for the freedom of expression is that using the Court's jurisprudence as a vehicle this should inspire and influence third countries, aiming at upgrading citizens' rights and setting international minimum standards. It entails a broader access to both information and transparency regarding matters that are of public interest, hence political debates may arise, however, it provides place for amelioration through pluralism.

Bibliography

Books and Articles

- Bakirci K. Unfair Dismissal in Turkish Employment Law: The Evolving Nature of the Employment Relationship: Protecting Workers from Unjust Dismissal Versus Safeguarding Employer Prerogatives, Employee Responsibilities and Rights Journal, Volume 16, Number 2, June 2004.
- Barendt Eric, Human Rights Act 1998 and Libel law: Brave New World?, 6 Media & Arts Law Review 1, (2001).
- Berger Mark, Europeanizing self – Incrimination: The right to remain silent in the European Court of Human Rights, Columbia Journal of European law, Vol. 12, 2006.
- Cameron Iain, Turkey and Article 25 of the European Convention on Human Rights, the International and Comparative Law Quarterly, Vol. 37, Oct. 1988.
- Cannie Hannes and Voorhoof Dirk, The abuse clause and freedom of expression in the European Human Rights Convention: An added value for democracy and human rights protection?, Netherlands Quarterly of Human Rights, Vol. 29/1, 54–83, 2011.
- Carkoglu Ali, Barry Rubin, Turkey and the European Union, domestic politics, economic integration and International Dynamics, Frank Cass edition, 2003.
- Chalmers D., Davies G., Monti G., European Union Law, Cambridge University Press, second edition, 2010.
- Doebbler Curtis F.G., Introduction to International Human Rights Law, CD Publishing, Washington D.C., 2007.
- Drewniak Erik, Bosphorus Case: The Balancing of Property Rights in the European Community and the Public Interest in Ending the War in Bosnia, Fordham International Law Journal, Volume 20, Issue 3 1996 Article 11.

- Ehlers Dirk, Europen Fundmental Rights and Freedoms, de Gruyter, 2007.
- Fekadeselassie F. Kidanemaria, Enforcement of Human Rights under Regional Mechanisms: a Comparative Analysis, LLM thesis, digital commons at University of Georgia, 2006.
- Fisher Ronald J. , Cyprus: The Failure of Mediation and the Escalation of an Identity-Based Conflict to an Adversarial Impasse, Journal of Peace Research, Vol. 38, No. 3, May 2001.
- Flaus Jean-François, The European Court of Human Rights and the Freedom of Expression, Indiana Law Journal, Vol. 84, Issue 3, Art. 3, 2009.
- Frowein Jochen, Freedom of expression under the European Convention of Human Rights, Document prepared by the Secretary General's monitoring unit, Compliance with commitments entered into by member states: Information concerning the Committee of Ministers' monitoring procedure, Freedom of expression and restrictions included in the penal code and other legal texts: seminars held in Budapest and in Strasbourg, Monitor/Inf (97) 3, Council of Europe, 1997.
- Graber Christoph Beat, Freedom of Expression and Unfair Competition: The Hertel Case and Beyond, Discussion Paper prepared for the second Conference of the ASIL Project on International Trade and Human Rights World Trade Institute, Bern, June 13/14, 2003
- Greer Steven, The European Convention on Human Rights, Achievements, Problems and Prospects, Cambridge press, 2004.
- Hajjar Lisa, Religion, State Power, and Domestic Violence in Muslim Societies: A Framework for Comparative Analysis, Law & Social Inquiry, Vol. 29, No. 1, Winter, 2004.
- Haopei Li, International law in the post -cold world war, Routledge studies in international law, 2001.
- Harun Arikan, Turkey and the EU, Ashgate, 2003.
- Hugenholz Bernt, Copyright and freedom of expression in Europe, Rochelle Cooper Dreyfuss, Harry First and Diane Leenheer

Zimmerman (eds.), Expanding the Boundaries of Intellectual Property, Oxford: Oxford University Press 2001.

- Krzeminska Joanna, Freedom of commercial speech in Europe, Zentrum fur Europaische Rechtspolitik, University of Bremen, Research Training Network, "Fundamental Rights and Private Law in the European Union", available at: http://aei.pitt.edu/3043/1/JKrzeminska_EUSA_paper.txt last visit: 5/1/2012.
- Krzeminska Joanna, Worlds in Collision: Freedom of Speech and Unfair Competition; Are There Less Fundamental Zones within the Right to Speak Freely? The Case of Commercial Speech, nternational Conference on Conflicts Between Fundamental Rights, Ghent, Belgium, December 15, 2006.
- Kuhnert Kathrin, Bosphorus – Double standards in European human rights protection?, Research paper, http://www.utrechtlawreview.org/index.php/ulr/article/viewFile/31/31, last visit: 13/5/2012.
- Levine Caroline, Provoking Democracy: Whe We Need the Arts, Blackwell Publishing, 2007.
- Lock Tobias, The ECJ and the ECtHR: The Future Relationship between the Two European Courts, The Law and Practice of International Courts and Tribunals, Vol. 8, pp. 375–398, 2009.
- Loucaides Loukis, The European Convention on Human Rights, Collected Essays, Martinus Nijhoff Publishers, 2007.
- MacLennan Julio Crespo, The EU-Turkey Negotiations: Between the Siege of Vienna and the Reconquest of Constantinople, Constatine Arvanitopoulos editor, Turkey's accession to the European Union, an unusual candidacy, Springer, 2009.
- Macovei Monica, Freedom of Expression, A guide to the implementation of Article 10 of the European Convention on Human Rights, Human rights handbooks, No. 2, 2004.
- McGonagle Marie, Restrictions to the expression of opinions, or disclosure of information about politicians or civil servants, Document

prepared by the Secretary General's monitoring unit, Compliance with commitments entered into by member states: Information concerning the Committee of Ministers' monitoring procedure, Freedom of expression and restrictions included in the penal code and other legal texts: seminars held in Budapest and in Strasbourg, Monitor/Inf (97) 3, Council of Europe, 1997.

- Mowbray Alastair, European Convention on Human Rights: The 12th Protocol and recent cases, Human Rights Law Review, Vol. 1, N. 1, 2001.
- Nielsen Jorchen S. et all, Yearbook of Muslims in Europe, Volume 1, IDC Publishers, Martinus Jihoff Publishers, 2009.
- Oetheimer Mario, Les « devoirs » et « responsabilités » des journalistes : une garantie à l'exercice de la liberté d'expression ?, Projet de rapport, 2008, available at: http://www-ircm.u-strasbg.fr/seminaire_oct2008/docs/Oetheimer_Devoirs_et_responsabilites.pdf, last visit: 07/1/2012.
- Patton Marcie J. , "Turkishness" and state institutions, Turkey's Tug of War, Middle East Report, No. 239, summer 2006.
- Pech Laurent, Freedom of Expression and Disability, Symposium on Human Rights & Disability Discrimination: Exploring the Value Added by the ECHR, September 25, 2004, available at: http://www.nuigalway.ie/law/documents/working/4%20CPS%202004.pdf, last visit: 05/1/2012.
- Phelps Joseph, COMMENT: Reflections on Bosphorus and Human Rights in Europe, November, 2006, 81 Tul. L. Rev. 251.
- Rzeplinski A., Restrictions on the expression of opinions or disclosure of information on domestic or foreign policy of the state, Document prepared by the Secretary General's monitoring unit, Compliance with commitments entered into by member states: Information concerning the Committee of Ministers' monitoring procedure, Freedom of expression and restrictions included in the penal code and other legal texts: seminars held in Budapest and in Strasbourg, Monitor/Inf (97) 3, Council of Europe, 1997.

- Rzeplinski Andrzej, Restrictions to the expression of opinions, or disclosure of information on domestic or foreign policy of the State, Document prepared by the Secretary General's monitoring unit, Compliance with commitments entered into by member states: Information concerning the Committee of Ministers' monitoring procedure, Freedom of expression and restrictions included in the penal code and other legal texts: seminars held in Budapest and in Strasbourg, Monitor/Inf (97) 3, Council of Europe, 1997.
- Sabel Charles F. and Gerstenberg Oliver, Constitutionalising an Overlapping Consensus: The ECJ and the Emergence of a Coordinate Constitutional Order, European Law Journal, Vol. 16, No. 5, September 2010.
- Schimmelfennig Frank, The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Ennlargement of the European Union, International Organization, Vol. 55, No. 1, Winter 2001.
- Schorkopf Frank, The European Court of Human Rights' Judgment in the Case of Bosphorus Hava Yollari Turizm v. Ireland, http://www.germanlawjournal.com/pdfs/Vol06No09/PDF_Vol_06_No_09_1255-1264_Developments_Schorkopf.pdf, last visit: 13/5/2012.
- Scoffoni Guy, notes from the course "Fundamental rights" at University Aix-Marseille III.
- Sevinç Murat, Hunger Strikes in Turkey, Human Rights' Quarterly, Vol. 30 No. 3, Aug. 2008.
- Sharland Andrew, Focus on Article 10 of the ECHR, Judicial Review, Vol. 14 Issue 1, March 2009.
- Sionaidh Douglas-Scott, A Tale of Two Courts: Luxembourg, Strasbourg and the Growing European Human Rights Acquis, common market law review, 43, 2006, in Grainne de Burca, The European Court of Justice and the International Legal Order After Kadi, Volume 51, Number 1, Winter 2010.
- Smet Stijn, Freedom of expression and the right to reputation: Human Rights in Conflict, American University International Law Review, 26:1, 2010.

- Smith Rhona, International Human Rights, Oxford University Press, 3rd edition, 2007.
- Tania Groppi, Freedom of thought and expression General Report, Political Structure and Human Rights-European Union Meeting Union of Turkish Bar, Ankara, 16-18 april 2003.
- Tarlach McGonagle, "Wresting (Racial) Equality from Tolerance of Hate Speech", 23 Dublin University Law Journal (ns) 21, 2001.
- Uyttendaele Caroline, Joseph Dumortier, "Free Speech on the Information Superhighway: European Perspectives", The John Marshall Journal of Computer & Information Law, L 905, summer 1998
- Van Dijk and Van Hoof, Kluwer, Theory and Practice of the European Convention on Human Rights, Kluwer Law International, 1998.
- Yildiz Kerim, Mcdermott Juliet, Torture in Turkey: the ongoing practice of torture and ill-treatment, Kurdish human right project, 2004.
- Yourow Howard Charles, The margin of appreciation doctrine in the dynamics of European Human Rights jurisprudence, International Studies in Human Rights, Martinus Nijhoff Publishers, 1996.
- A summary of the Atlantic Council/Chatham House meeting held at Chatham House on 10/11 November 2010, Transatlantic Dialogues in International Law: International Law and Human Rights.
- Case study 63 – article 10 of the ECHR (Freedom of expression and political elections), Council of Europe, 2007.
- Comparative Study of Laws and Regulations Restricting the Publication of Electoral Opinion Polls, by Article 19, Global Campaign for Free Expression London. January 2003.
- Cultural rights in the case-law of the European Court of Human Rights, Research division of the ECHR, Council of Europe / European Court of Human Rights, January 2011
- Freedom of expression in Europe, Case-law concerning article 10 of the European Convention on Human Rights, Human Righst Files, No. 18, Council of Europe Publishing, 2007.
- Introduction to European Convention on Human Rights, Human Rights Information Centre – Collected texts, Council of Europe, 1994.

- Notes from the course "The protection of human rights in Europe", Antoine Bailleux, Institut d'Etudes Politiques de Paris, 2011-2012.
- Report of the Committee on Legal Affairs and Human Rights, Rapporteur: Mr Christos Pourgourides, Cyprus, Group of the European People's Party, Fair trial issues in criminal cases concerning espionage or divulging state secrets, Parliamentary Assembly, Doc. 11031, 2006.
- Seminar on the European Protection of Freedom of Expression: Reflections on Some Recent Restrictive Trends, Strasbourg, 10 October 2008, available at: http://www-ircm.u-strasbg.fr/seminaire_oct2008/index.htm, last visit: 25/12/2011.
- The margin of appreciation, Judicial Professions, The Lisbon network, available at: http://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/ECHR/Paper2_en.asp.
- Αρτέμης Π., Η ελευθερία του λόγου και της έκφρασης: η ελευθερία του τύπου, το δίκαιο της δυσφήμησης και το προνόμιο υπό επιφύλαξη, Ημέρα Πολιτικής Δικαιοσύνης, 23 Οκτωβρίου 2008, available at: http://www.supremecourt.gov.cy/judicial/sc.nsf/0/F5B39E98EDCFEBA5C225750D0029826B/$file/Politiki-Dikeos-23Oct.08.pdf last visit: 05/1/2012.
- Περράκης, «Τα δικαιοδοτικά όρια του ΔΕΚ υπό Ευρωπαϊκή Διακυβέρνηση», Νομική Βιβλιοθήκη, 2009.
- Στεφάνου Κ., Καταπόδης Γ. Οι ευρωπαϊκές συνθήκες μετά την αναθεώρηση της Λισσαβόνας, εκδ. Α. Σάκκουλας, 2008, Αθήνα.

Internet Sites:

- http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG, last visit: 19/12/2011.
- http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-/0/ENG_CONV.pdf, last visit: 19/12/2011.
- http://www.coe.int/t/dghl/standardsetting/media/doc/cm/rec(2000)007&expmem_EN.asp, last visit: 4/2/2012.

- http://www.unhchr.ch/tbs/doc.nsf/0/e00415d0170ee8a5c1256b3a0051eb22/$FILE/G0144925.pdf, last visit: 4/2/2012.
- http://sim.law.uu.nl/SIM/CaseLaw/hof.nsf/e4ca7ef017f8c045c1256849004787f5/39da9ae9352064e3c1256640004c1b45?OpenDocument.
- http://www.unhcr.org/refworld/country,,ECHR,,IRL,,3ae6b7020,0.html, last visit: 21/1/2012.
- http://www.humanrights.is/the-human-rights-project/humanrightscasesandmaterials/cases/regionalcases/europeancourtofhumanrights/nr/448, last visit 1/4/2012.
- http://ec.europa.eu/enlargement/pdf/turkey/screening_reports/screening_report_12_tr_internet_en.pdf, last visit on 4/2/2012.
- http://sim.law.uu.nl/sim/caselaw/Hof.nsf/d0cd2c2c444d8d94c12567c2002de990/f5d84c0a23b5b18dc1256640004c1d01?OpenDocument, last visit: 1/5/2012.
- http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/turkey_en.pdf, last visit on 4/2/2012.
- http://www.mlfoe.org/Article/Detail.aspx?ArticleUid=48d85c77-e62a-46d4-9412-f94ddb2e9b84, last visit: 1/5/2012.
- http://www.menschenrechte.ac.at/orig/97_5/Oberschlick.pdf, last visit: 2/5/2012.
- http://merlin.obs.coe.int/iris/1995/6/article6.en.html, last visit: 2/5/2012.
- http://ec.europa.eu/enlargement/pdf/turkey/screening_reports/screening_report_12_tr_internet_en.pdf, last visit on 7/4/2012.
- http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/turkey_en.pdf, last visit on 7/4/2012.
- http://www.economist.com/node/15505946, last visit: 10/2/2012.
- http://www.un.int/cyprus/resolut.htm last visit: 10/2/2012.
- http://blogs.lse.ac.uk/europpblog/2012/03/14/turkey-echr/, last visit 10/5/2012.
- http://ucl.academia.edu/VirginiaMantouvalou/Papers/1223214/Work_and_private_life_Sidabras_and_Dziautas_v_Lithuania, last visit: 9/5/2012.
- http://merlin.obs.coe.int/iris/2000/4/article1.en.html, last visit: 9/5/2012.

- http://www.echr.coe.int/NR/rdonlyres/16237F92-BCB9-4F12-9B1C-0EF6E3B2CB27/0/RAPPORT_RECHERCHE_Positive_obligations_under_Article_10_EN.pdf, last visit: 9/5/2012.
- http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61994CV0002:EN:PDF, last visit: 15/3/2012.
- Resolution 1068 of 1995 on the accession of the European Community to the European Convention on Human Rights, http://assembly.coe.int/main.asp?Link=/documents/adoptedtext/ta95/eres1068.htm, last visit: 10/5/2012.
- White Paper on the 1996 Intergovernmental Conference, vol. II, European Parliament, 1997, http://www.europarl.europa.eu/igc1996/pos-it_en.htm, last visit: 12/5/2012.
- http://lexisweb.co.uk/cases/2003/may/appleby-and-others-v-united-kingdom, last visit: 12/5/2012.
- http://www.iidh.ed.cr/comunidades/libertadexpresion/docs/le_europeo/jerusalem%20vs%20austria%202001.htm, last visit: 12/5/2012.
- http://sim.law.uu.nl/sim/caselaw/Hof.nsf/233813e697620022c1256864005232b7/5386a3ef41726da7c1256a01003f9c85?OpenDocument, last visit: 12/5/2012.
- http://sim.law.uu.nl/sim/caselaw/Hof.nsf/233813e697620022c1256864005232b7/8c78b7abee37600841256d20004cfb51?OpenDocument, last visit: 12/5/2012.
- http://www.article19.org/resources.php/resource/2695/en/schopfer-v.-switzerland, last visit: 12/5/2012.
- http://sim.law.uu.nl/sim/caselaw/Hof.nsf/233813e697620022c1256864005232b7/753b15ba74dcf519c12570d5005130a0?OpenDocument, https://wcd.coe.int/ViewDoc.jsp?id=830869&Site=COE last visit 12/5/2012.
- C. Costello, "The Bosphorus Ruling of the European Court of Human Rights: Fundamental Rights and Blurred Boundaries in Europe", 2006, http://hrlr.oxfordjournals.org, last visit: 12/5/2012.

- http://www.hrw.org/news/2005/09/28/turkey-case-against-novelist-threatens-freedom-expression, last visit: 2/3/2012.

Jurisprudence

- Sunday Times v United Kingdom, 1979.
- Handyside v United Kingdom, 1976.
- Sener v. Turkey, 2000.
- Markt Intern Verlag GmbH and Klaus Beermann v. the Federal Republic of Germany, 1989.
- Jacubowski v. Germany, 1994.
- Hertel v. Switzerland, 1998.
- Otto-Preminger Institut v. Austria, 1994.
- Dichand and Others v. Austria, 2002.
- Müller and Others v. Switzerland, 1988.
- Lingens v. Austria, 1986.
- Thorgeir Thorgeirson v. Iceland, 1992.
- Thoma v. Luxembourg, 2001.
- Jersild v. Denmark, 1994.
- Informationsverein Lentia and Others v. Austria, 1993.
- Groppera Radio AG and Others v. Switzerland, 1990.
- Engel and Others v. the Netherlands, 1976.
- Hadjianastassiou v. Greece, 1992.
- Vereinigung Demokratischer Soldaten Österreichs und Gubi v. Austria, 1994.
- Vogt v. Germany, 1995.
- Sunday Times v. the United Kingdom, 1979.
- Observer and Guardian v. the United Kingdom, 1995.
- Incal v. Turkey, 1998.
- Castells v. Spain, 1992.
- Open Door and Dublin Well Woman v. Ireland, 1992.
- Jersild v. Denmark, 1994.

- Sunday Times v. the United Kingdom, 1979.
- Goodwin v. the United Kingdom, 1996.
- D.I. v. Germany, 1996.
- Campbell v MGN, 2011.
- Weber v. Switzerland, 1990.
- Barfod v. Denmark, 1989.
- Schwabe v Austria, 1992.
- Vereniging Weekblad Bluf! v. the Netherlands, 1995.
- Oberschlick v. Austria, 1997.
- Groppera Radio v. Switzerland, 1990.
- Autronic v. Switzerland, 1990.
- Informationsverein Lentia and others v. Austria, 1993.
- Informationsverein Lentia v. Austria, 2002.
- Radio ABC v. Austria, 1997.
- Tele 1 Privatfernsehgesellschaft mbH v. Austria, 2000.
- Österreichischer Rundfunk, the national public service broadcaster of Austria.
- VGgt Verein v. Tierfabriken, 2001.
- Demuth v. Switzerland, 2002.
- Leander v. Sweden, 1987.
- Gaskin v. United Kingdom, 1989.
- Guerra and others v. Italy, 1998.
- Markt Intern Verlag GmbH and Klaus Beermann v. the Federal Republic of Germany, 1989.
- Casado Coca v. Spain, 1994.
- Jacubowski v. Germany, 1994.
- Stambuk v. Germany, 2002.
- Krone Verlag GmbH & Co. KG v. Austria, 2003.
- Glasenapp v. the Federal Republic of German,1984.
- Kosiek v. the Federal Republic of Germany, 1984.
- Piermont v. France, 1995.
- Loizidou v Turkey, 1995.

- Vogt v. Germany, 1995.
- brahim Aksoy v. Turkey, 2000.
- Emire Eren Keskin v. Turkey, 2005.
- Karkın v. Turkey, 2003.
- Kizilyaprak v. Turkey, 2003.
- Zarakolu and Belge Uluslararası Yayıncılık v. Turkey, 2004.
- Doaner v. Turkey, 2004.
- Odaba v. Turkey, 2004.
- Perinçek v. Turkey, 2005.
- Han v. Turkey, 2005.
- Veysel Turhan v. Turkey, 2005.
- Osman Özçelik and others v. Turkey, 2005.
- Yüksel (Geyik) v. Turkey, 2005.
- Fikret Sahin v. Turkey, 2005.
- Steel and others v. United Kingdom, 1998.
- Sidabras and Dziautas v. Lithuania, 2004.
- Alinak v. Turkey, 2005.
- Fuentes Bobo v. Spain, 2000.
- Constantinescu v. Romania, 2000.
- Opinion of the ECJ 2/94, 1996.
- BverfGE, 29 May 1974, Solange I.
- Case 11/70 Internationale Handelsgesellschaft, 17 December 1970.
- C-260/89 Elliniki Radiophonia Tiléorassi AE and Others v Dimotiki Etairia Pliroforissis, 1991.
- Kadi, C-402 and 415/05.
- C-84/95 Bosphorus 1996.
- Jerusalem v. Austria, 2001.
- Appleby and others v. the United Kingdom, 2003.
- Schöpfer v. Switzerland, 1998.
- Kyprianou v. Cyprus, 2005.
- Pedersen and Baadsgaard v. Denmark.
- Busuioc v. Moldova, 2004.

- C-84/95 Bosphorus Airlines v Ireland, 1996.
- Bosphorus v Ireland, No. 45036/98, 2005.

Legal Documents

- 8th Protocol relating to Article 6(2) of the Treaty on European Union on the Accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms.
- Treaty TEU Treaty on European Union.
- TEU(M) Treaty on European Union (Maastricht).
- TFEU Treaty on the Functioning of the European Union.
- Charter of Fundamental Rights of the European Union.
- Explanations of the Charter of Fundamental Rights of the European Union.
- ECHR European Convention on Human Rights.

Supporting material

PROTOCOL (No 8)

RELATING TO ARTICLE 6(2) OF THE TREATY ON EUROPEAN UNION ON THE ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

THE HIGH CONTRACTING PARTIES,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention") provided for in Article 6(2) of the Treaty on European Union shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

(a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;

(b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

Article 2

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

Article 3

Nothing in the agreement referred to in Article 1 shall affect Article 344 of the Treaty on the Functioning of the European Union.

Charter of Fundamental Rights of the European Union

18.12.2000 EN Official Journal of the European Communities C 364/11

Article 11

Freedom of expression and information

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.
2. The freedom and pluralism of the media shall be respected.

CHAPTER VII
GENERAL PROVISIONS

Article 51

Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52

Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under the conditions and within the limits defined by those Treaties.
3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

Explanation
(of the article 11 of the Charter of Fundamental Rights of the European Union)

1. Article 11 corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:
"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 as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the

prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Pursuant to Article 52(3) of the Charter, the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which Community competition law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty, and on Council Directive 89/552/EC (particularly its seventeenth recital).