



May 2011

This Factsheet does not bind the Court and is not exhaustive

New technologies

Internet

Perrin v. the United Kingdom (application no. 5446/03)

Declared inadmissible 18.10.2005

Concerned the conviction and sentencing to 30 months' imprisonment of a French national based in the UK – and operating a US-based Internet company with sexually explicit content – for publishing obscene articles on Internet.

The Court was satisfied that the criminal conviction was necessary in a democratic society in the interests of the protection of morals and/or the rights of others and that the sentence was not disproportionate

Complaint under Article 10 (freedom of expression) rejected as inadmissible

PAEFFGEN GMBH v. Germany (nos. 25379/04, 21688/05, 21722/05 and 21770/05)

Declared inadmissible 18.09.2007

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

The Court found that the court orders requiring the applicant company to cancel the domains had struck a fair balance between the protection of its possessions and the requirements of the general interest (ie to prevent the company from continuing to violate third parties' trademark rights)

Complaint under Article 1 of Protocol No. 1 (protection of property) rejected as inadmissible

Muscio v. Italy (no. 31358/03)

Declared inadmissible on 13.11.2007

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

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

Complaint under Article 8 (right to respect for private and family life) declared inadmissible.

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

2.12.2008

The case concerned an advertisement of a sexual nature posted about a 12-year old boy on an Internet dating site. Under Finnish legislation in place at the time¹, the police and the courts could not require the Internet provider to identify the person who had posted the ad. In particular, the service provider refused to identify the person responsible, claiming it would constitute a breach of confidentiality.

The Court considered that posting the ad was a criminal act which made a minor a target for paedophiles. The legislature should have provided a framework for reconciling the confidentiality of Internet services with the prevention of disorder or crime and the protection of the rights and freedoms of others, and in particular children and other vulnerable individuals

Violation of Article 8 (right to respect for private and family life)

Times Newspapers Ltd v. the United Kingdom (nos. 1 & 2) (nos. 3002/03 and 23676/03)

10.03.2009

The Times Newspapers Ltd complained that the UK Internet publication rule exposed them to ceaseless liability for libel (ie each time an article is accessed in electronic archives, a new cause of action in defamation arises) following the publication of two articles, in September and October 1999, reporting on a massive money-laundering scheme carried out by an alleged Russian mafia boss. Both articles were uploaded onto The Times website on the same day as they were published in the paper version of the newspaper. During the subsequent libel proceedings against the applicant newspaper, it was required to add a notice to both articles in the Internet archive announcing that they were subject to libel litigation and were not to be reproduced or relied on without reference to Times Newspapers Legal Department.

The Court noted that the domestic courts had not suggested that the articles be removed from the archive altogether. Accordingly, the Court did not consider that the requirement to publish an appropriate qualification to the Internet version of the articles constituted a disproportionate interference with the right to freedom of expression.

No violation of Article 10 (freedom of expression)

Willem v. France (no.10883/05)

16.07.2009

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

No violation of Article 10 (freedom of expression)

Renaud v. France (no. 13290/07)

25.02.2010

Patrice Renaud complained of his conviction in 2005 for defaming and publicly insulting the mayor of Sens on the Internet site of the association of which he was president and webmaster.

The Court considered that Mr Renaud's conviction had been disproportionate to the legitimate aim of protecting the reputation and rights of others

Violation of Article 10 (freedom of expression)

Editorial Board of Pravoye Delo and Shtekel v. Ukraine (no. 33014/05)

05.05.2011

The case mainly concerned the lack of adequate safeguards in Ukrainian law for journalists' use of information obtained from the Internet. In particular, defamation proceedings were brought against a local newspaper in Odessa and its editor-in-chief

¹ A legal framework had been introduced by the time of the Court's judgment under the Exercise of Freedom of Expression in Mass Media Act.

following their publication in September 2003 of a letter downloaded from the Internet alleging that senior local officials were corrupt and involved with the leaders of an organised criminal gang. The courts ruled against the applicants and ordered them to publish an apology and pay 2,400 Ukrainian hryvnias (approximately 33,060 euros), eventually waived via a friendly settlement.

The Court considered that the newspaper's staff had been wrongly sanctioned. Notably:

"The Court, having regard to the important role the Internet played for media activities generally, and for the exercise of freedom of expression, found that the absence of legal regulation allowing journalists to use information obtained from the Internet without fear of being sanctioned, was an obstacle to the press exercising their vital function of a "public watchdog".

Two violations of Article 10 (freedom of expression)

Mosley v. the United Kingdom – (no. 48009/08)

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

The Court held in particular that the European Convention on Human Rights did not require media to give prior notice of intended publications to those who feature in them.

No violation of Article 8 (right to respect for private and family life)

PENDING CASES

Jankovskis v. Lithuania (no. 21575/08)

Communicated 27.09.2010

Concerns in particular refusal of prison authorities to give a convicted prisoner access to Internet

Article 10 (freedom of expression)

Delfi AS v. Estonia (no. 64569/09)

Communicated 11.02.2011

Concerns Delfi, one of the largest news portals on the internet in Estonia, and its responsibility for the comments posted by its readers. Following an article published on its site about a company planning to destroy "iceroads" (roads linking mainland Estonia with some of its islands), offensive comments were posted on the portal about the company's majority shareholder and, as a result, he brought a civil suit against the news portal. The courts found against the news portal and awarded the plaintiff damages.

Article 10 (freedom of expression)

Yildirim v. Turkey (no. 3111/10)

Akdeniz v. Turkey (no. 20877/10)

Communicated on 31.01.2011

In the first case, the blocking by the Turkish authorities of all access to personal sites on the "Google.com" network, with the aim of prohibiting access to one such site in particular, had the effect of preventing the applicant from accessing his own site, which had no connection to the site concerned.

In the second case, the Turkish authorities blocked access to all sites on the "Myspace" and "Last.fm" networks on account of copyright infringements.

Article 10 (freedom of expression)

Article 10 (freedom of expression)

Electronic databases

S. and Marper v. the United Kingdom (nos. 30562/04 and 30566/04)

04.12.2008

Concerned the indefinite retention in a database of the applicants' fingerprints, cell samples and DNA profiles² after criminal proceedings against them had been terminated by an acquittal in one case and discontinued in the other case.

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

Violation of Article 8 (right to respect for private and family life)

Bouchacourt v. France, Gardel v. France and M.B. v. France (nos. 5335/06,16428/05 and 22115/06)

17.12.2009

Concerned inclusion in national sex offender data base of three men convicted of rape of 15 year-old minors by a person in a position of authority

The Court took the view that the length of the data conservation – 30 years maximum – was not disproportionate in relation to the aim pursued – prevention of crime – by the retention of the information. Moreover, the consultation of such data by the court, police and administrative authorities, was subject to a duty of confidentiality and was restricted to precisely determined circumstances

No violation of Article 8 (right to respect for private and family life)

Deceuninck v. France (no. 47447/08) **PENDING**

Communicated on 06.04.2010

Concerns an organic farmer's complaint about an order to take cell samples from him containing his genetic data following his conviction for digging up experimental crops of transgenic beetroot

Article 8 (right to respect for private and family life)

Closed-circuit television

Peck v. the United Kingdom (no. 44647/98)

28.01.2003

Concerned disclosure to the media of footage filmed in a street by a closed-circuit television (CCTV) camera installed by the local council, showing Mr Peck cutting his wrists.

The Court found that the disclosures were not accompanied by sufficient safeguards and, therefore, constituted a disproportionate and unjustified interference with Mr Peck's private life

Violation of Article 8 (right to respect for private and family life)

² DNA profiles are digitised information which is stored electronically on the National DNA Database together with details of the person to whom it relates.

Köpke v. Germany (no. 420/07)

Declared inadmissible 05.10.2010

Concerned covert video surveillance of a supermarket cashier resulting in her dismissal for theft

The Court concluded that the domestic authorities had struck a fair balance between the employee's right to respect for her private life and her employer's interest in the protection of its property rights and the public interest in the proper administration of justice.

The Court observed, however, that the competing interests concerned might well be given a different weight in the future, having regard to the extent to which intrusions into private life were made possible by new, more and more sophisticated technologies.

Complaint under Article 8 (right to respect for private and family life) rejected as inadmissible

E-mail

Copland v. the United Kingdom (no. 62617/00)

03.04.2007

Concerned monitoring by a College of e-mails of the deputy principal's personal assistant.

The Court held that the monitoring had not been in accordance with the law, there having been no domestic law at the relevant time to regulate monitoring

Violation of Article 8 (right to respect for private and family life)

GPS (Global Positioning System)

Uzun v. Germany (no. 35623/05)

02.09.2010

First case concerning GPS surveillance before the European Court of Human Rights.

Mr Uzun, suspected of involvement in bomb attacks by a left-wing extremist movement, was observed via GPS and the evidence obtained was used in the criminal proceedings against him

Given that the criminal investigation had concerned very serious crimes, the Court found that the GPS surveillance of Mr Uzun had been proportionate

No violation of Article 8 (right to respect for private and family life)

Satellite dish

Khurshid Mustafa and Tarzibachi v. Sweden (no. 23883/06)

16.12.2008

Two Swedish nationals of Iraqi origin complained that they and their three children were forced to move from their rented flat in Rinkeby (a suburb of Stockholm) in June 2006 because they refused to remove a satellite dish.

Violation of Article 10 (freedom of expression)

The Court observed in particular that the satellite dish enabled the applicants, an immigrant family who wished to maintain contact with the culture and language of their country of origin, to receive television programmes in Arabic and Farsi.

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