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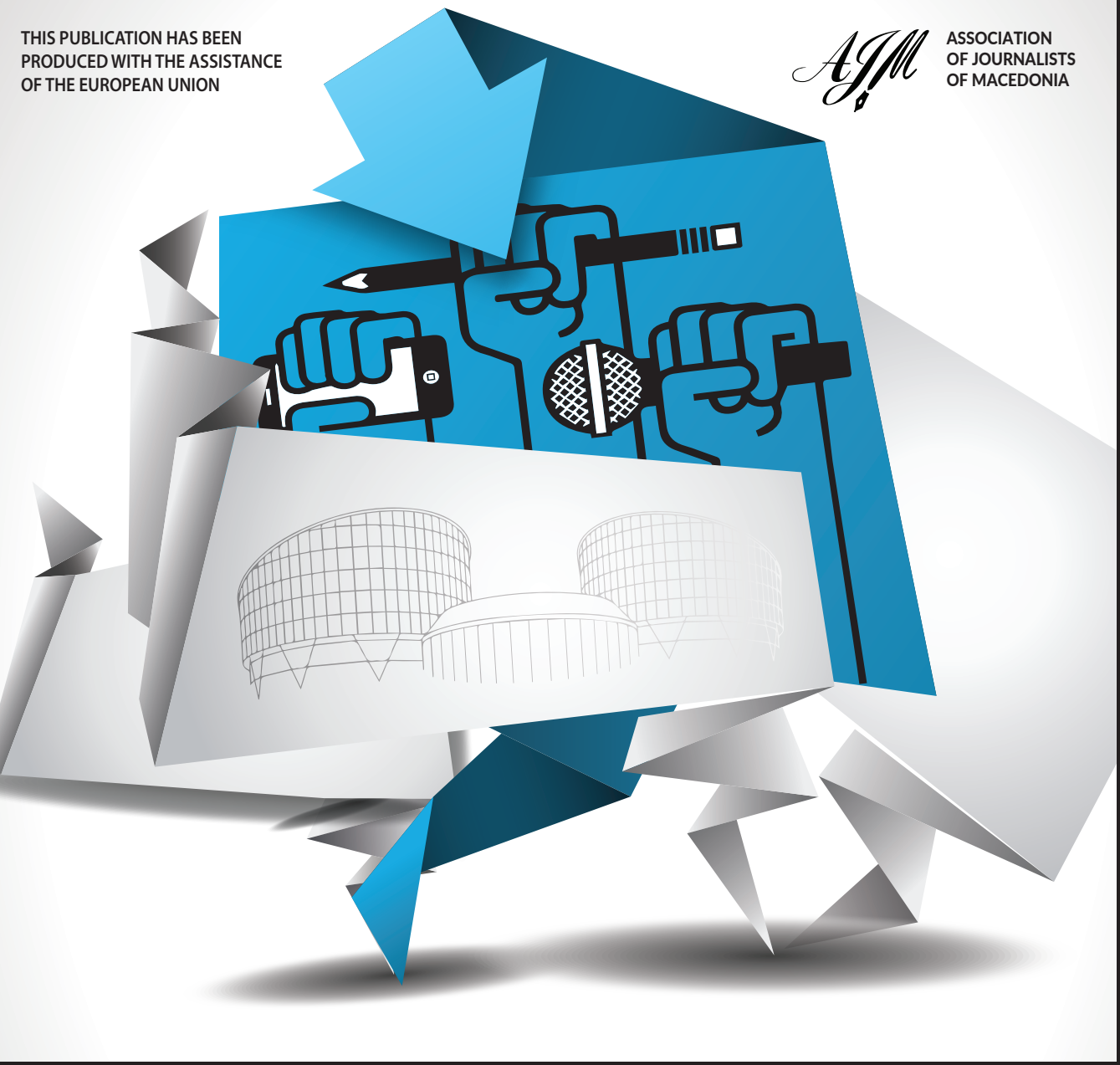

FREEDOM OF EXPRESSION

through the practice of the European Court of Human Rights

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Introduction

It is impossible to have functional democratic processes in any society without the right to freedom of expression. People express their thoughts through speech, write novels, journal articles, poetry and satire, draw drawings, make pictures, caricatures, create music, play, graffiti, make sculptures, and communicate online. All these forms of expression help a person to translate thought into expression. The more democratic the society, the greater the freedom of expression, because tolerance, respect for the voiced and individual opinions is one of the most important elements for progress. For these reasons, the right to freedom of expression, even though it does not fall among the rights that have absolute protection with the Convention, occupies a central place among the convention rights.

With this knowledge, the general approach of the European Court of Human Rights (hereinafter referred to as the Court of Justice in Strasbourg or the Court) rests on the liberal notion that, in principle, freedom of expression implies the protection of any statement, in any form, transmitted by a person, group or any kind of medium. The protection of freedom of expression covers attitudes, expressions stated by persons or small groups, even when they contain ideas that can be shocking to a majority of people. The Court incorporated this view in the judgment Handyside v. the United Kingdom, and later incorporated it in many other judgments and decisions. The court finds that Article 10 protects "not only information and ideas that are accepted with affection, or are considered inoffensive or indifferent, but also those who insult, shock or disturb - such are the requirements of pluralism, tolerance and broad-mindedness without, which there is no democratic society". The Court points out that "freedom of expression is one of the essential benefits of a democratic society, one of the basic conditions for its progress and the self-realization of each individual.[1]" To that end, through the Court's case law, the Court has developed clear principles relating to freedom of expression.

Freedom of expression prefers the pluralism of ideas, tolerance, and broad-mindedness without which there is no democratic society.[2]" Such affirmation of the social function of freedom of expression constitutes the basic philosophy of the entire case law relating to Article 10. This leads to two consequences: on one hand, freedom of expression is not only a protection from the influence of the state (subjective right) but is an objective fundamental principle of life in democracy; and on the other hand, freedom of expression is not an end in itself, but means of establishing a democratic society.[3]"

The purpose of protecting freedom of expression under Article 10 of the Convention must be widely interpreted to cover not only the content of information and ideas, but also the various forms and means through which they are expressed and accepted[4]. Article 10 does not prohibit the hearing or dissemination of information suspected to be probable[5]. In addition, the Court recognizes freedom of expression in its negative aspect - expressed through the right to express an opinion through silence.[6] The structure of Article 10 indicates that the first of the two paragraphs defines freedom of expression, while the second specifies the conditions in which a state can limit the freedom of expression exclusively on the grounds provided by law, and in no way other.[7]

In the analysis that follows, I will attempt to give an overview of freedom of expression through the numerous judgments

1 Handyside v. The United Kingdom, judgment from 07/12/1976, Application no. 5493/72 § 49.

2 Müller and Others v. Switzerland, judgment from 24/05/1988, Application no. 10737/84 § 27 or Autronic AG v. Switzerland, judgment from 22/05/1990, Application no. 12726/87, § 47.

3 Françoise Tulkens (When to say is to do Freedom of expression and hate speech in the case-law of the European Court of Human Rights) "Judicial Process and the Protection of Rights: The US Supreme Court and the European Court of Human Rights" George Washington University Law School (in cooperation with the U.S. Department of State Office of the Legal Adviser) March 1, 2012 (p.3).

4 Nilsen and Johnsen v. Norway 199-VIIv, 30 EHRR 878 § 43 GS.

5 Salov v. Ukraine § 113, judgment from 06/09/2005, Application no. 65518/01.

6 The right to remain silent is recognized in relation to the right to presumption of innocence (see more Harris, D.J., M. O'Boyle, E. P. Bates, C. M. Buckley (2009) Law of the European Convention on Human Rights, Second edition Oxford University Press p. 201 and p. 445).

7 The limitations established by the Court's case-law concern conveying the ideas promoting Nazi ideology, denying the Holocaust and inciting hatred and discord.

and decisions of the Court in Strasbourg. This publication is the second edition extended and supported by the latest case law. The first edition was published in November 2015 by MCIC with the assistance of the European Union within the project Technical Assistance for Civil Society Organizations 2 - TACSO 2. The attached analysis has been modified and expanded in way to focus on journalism-related case law and journalistic freedom of expression.

The purpose of this analysis is to give a general picture of the State parties' obligations regarding the right to freedom of expression, to indicate the mutual connection and reference to this right with the other rights and freedoms guaranteed by the Convention, but also the scope of the protection of freedom of expression. Due to the numerous forms through which the right to freedom of expression manifests, the focus here is on several of these forms: freedom of expression in politics, art, and civic association, with particular reference to journalists and journalistic expression. I decided on these forms of expression because of the structure and content of the complaints filed so far for the Republic of Macedonia before the Court of Strasbourg. Although some of these cases are still pending, this year, the Republic of Macedonia received the first judgment related to journalistic freedom of expression and the right to transmit information of public interest. Having in mind the fact that the judgment Selmani and Others v. the Republic of Macedonia with its very publication in Europe and more widely, attracted special attention, I devoted a special chapter to this judgement in this analysis.

In addition, at the time when Internet is one of the most important forms of expression and information sharing, it is essential to know the principles of the relationship between the right to privacy and the right to freedom of expression, which the Court has established in so far, in not so many judgments and Decisions related to freedom of expression and the Internet. The Court's starting point that freedom of expression is a rule, and any limitation is exception, requires thorough knowledge of the principles embedded in the practice of conventional law, and therefore I paid special attention to the part of the analysis concerning the restriction of freedom of expression. I made an effort to use judgments and decisions of the Court that are already translated into the Macedonian language in order to understand the case law used in this analysis.

The essence of conventional law requires that the State's obligations regarding the right to freedom of expression arise as result of the ratification of the Convention. On the one hand, the state has a negative obligation, which means that it refrains from arbitrary restrictions on freedom of expression and, on the other hand, has a positive obligation that obliges to take measures for the smooth enjoyment of freedom of expression. I think that the positive obligation should be specifically addressed, and for those reasons one of the following chapters focuses on what the state should do to protect freedom of expression.

1. The importance of freedom of expression

Because "... freedom of expression is one of the essential foundations of democratic society, one of the basic conditions for its progress and for the development of every human being[8]", this right has a particularly important place in the protection of human rights in itself, but also in relation to other rights and freedoms guaranteed by the Convention. The right to freedom of expression can be invoked and appealed. This implies, natural or legal individuals, regardless of their status, function, or position. The profession, status, vulnerability of the group or person may be relevant to the Court when deciding on complaints related to the restriction of freedom of expression.

The right to freedom of expression encompasses freedom of opinion and the freedom to receive and transmit information or ideas. In doing so, the Court does not provide definition of what is meant by "information" and "idea", although it is clear in court practice that photography, caricature, statements and interviews, medical secrets, historical research, advertisements have been accepted as information and ideas[9]. As a result of the great significance of freedom of expression in the development of any democratic society and the vital role of journalism as "public watchdog", the Court underlined the freedom of expression right to express information on duty, to transmit information, as well as the protection of journalistic sources of information[10].

Hence, freedom of expression, although not in the group of absolute rights, enjoys strong protection and is a prerequisite for other freedoms. Therefore, the Court has repeatedly stated "The press has the duty to send information and ideas on political issues just as with other areas of public interest. The press not only has the task of sending information and ideas, the public have the right to receive them. [11]"In this respect, the Court has a clear view that state parties cannot be placed between the transmitter and the recipient of information, as they have the right to enter into directs interaction at their own will.

The Court distinguishes between information presented in the form of facts and opinions expressed as value judgments. This distinction is important, since the existence of facts can be demonstrated and proved, while the truth of the value judgments expressed in the form of opinion is not entirely susceptible to evidence. Value estimates are estimates and views of some situations or events and they are not always subject to proof of their accuracy or error. For value judgments expressed in relation to politics, public interest issues, criticisms expressed to the government, opinion expressed in a political campaign or in relation to criticism directed at public authorities, the Court has a wide degree of tolerance and in that respect, the principle of the margin of acceptance of the state's approach has a low degree of acceptability. In this context, in the case Dalban v. Romania, in a published article, the journalist accused a politician of mismanagement of state property and corruption. The Court accepted that "journalistic freedom also includes possible inclination towards a degree of exaggeration, even provocation[12]".

The freedom to receive information and ideas covers the right to request, access and collect information. This certainly means that besides the media and the journalists who secure information to send out (to the public???), this freedom also covers the right of the public to be adequately informed, particularly, when it comes to issues of public interest leading to debate of broad interest.

The freedom of expression through the printed form of expression rests on rich judicial practice in relation to expression through the press, literary work, and art. When handling complaints regarding these forms of expression, the Court examines the manner of expression (through printed media, television, posters, speech, etc.) the type of expression (political, civic, artistic, commercial, scientific, literary, etc.) and to what kind of audience it is addressed (specific target group, scientific public, children, adults, students, etc.).

8 Prager and Obershlick v. Austria, judgment from 26/04/1995, Application no. 15974/90.
9 Hachette Filipacchi v. France, Application no. 71111/01, judgment from 14/06/2007.
10 Goodwin v. The United Kingdom, judgment from 27/03/1996 & 28, Application no. 17488/90.
11 Lingens v. Austria, Application no. 9815/82, judgment from 0/07/1986.
12 Dalban v. Romania, Application no. 28114/95 from 28/09/1999.

Political expression implies freedom in political debate and free elections that together constitute the foundation of any democratic society. Healthy democracy assumes immediate control not only of the legislator and judicial authorities, but also especially of the public or the media[13]. Freedom of expression will be the basis for any statement as long as it does not lead to encouragement of violence, armed resistance, and uprising and until it is not representing hate speech.

1.1. Freedom of expression in politics

An open and creative political debate is one of the key concepts of any democratic society. In this regard, undoubtedly free elections and political debate are the "foundation of any democratic society". The Court "gives the highest importance to freedom of expression in the context of political debate and considers that political discourse should not be limited without solid reasons" in order to avoid the suppression of critical thought. The starting point is that the right to freedom of expression is "precious to all" and is "particularly important for political parties and their active members..."because they represent voters and their interests. On the other hand, the healthy democracy requires the authorities to be "exposed to criticism not only by the legislature and judicial authorities, but also by the general public and the media.[14]" Due to their dominant position, national and local authorities should be tolerant towards greater degrees of criticism about them and avoid applying any "downgrading effect" to freedom of expression in politics.

Freedom of expression practiced by elected politicians or journalists has "privileged status" because of the impact of public debates on matters of public interest. The Court has developed various doctrines as the "downgrading effect" or "less restrictive alternative measures" to reinforce the freedom of political expression. One of the forms to protect freedom of speech in politics is the immunity of parliamentarians[15]. The freedom of political speech obliges "politicians to avoid in their political speeches the dissemination of comments that could lead to intolerance[16]." Having in mind their presence in public life and the frequent opportunity for politicians to publicly express their opinion, the Court several times emphasized the special responsibility of politicians in practicing their right to freedom of speech, especially in the fight against intolerance.

Hence, the role of political parties in promoting pluralism and in promoting the healthy functioning of democracy it is undoubtedly important [17]. In the judgment Stankov and the United Macedonian Organization Ilinden v. Bulgaria, the Court emphasized, "The essence of democracy is in the ability to solve problems through open debate ..." and that "... In a democratic society based on the rule of law, the political ideas that are challenging for the existing order and whose accomplishment is supported by peaceful means must be given appropriate opportunity for expression through the exercise of the right to association, as well as with other legal means.[18]"

1.2. Freedom of expression in art

Artists, among them painters, sculptors, photographers, caricaturists, actors, singers, musicians who create, perform, disseminate or exhibit works of art, contribute to the exchange of ideas and opinions that are often encouraged, created or accompanied, which is essential for a democratic society. Therefore, the state has an obligation not to impede their freedom of expression. Both, artists and those who promote their work are certainly not immune to the possibility of limitation, as foreseen the right to freedom of expression. Anyone who uses freedom of expression, assumes "duties and responsibilities" and their scope "will depend on the situation and the means it uses.[19]"

13 Vides Aizsardzības Klubs v. Lithuania, Application no. 57829/00 from 27/05/2004.
14 Lombardo and Others v. Malta, judgment from 24/04/2007, Application no. 7333/06.
15 Karhuvaara and Iltalehti v. Finland, judgment from 16/11/2004, Application no. 53678/00.
16 Incal v. Turkey, GC judgment from 09/06/1998, Application no. 22678/93.
17 Refah Partisi and Others v. Turkey, judgment from 13/02/2003, on Applications no. 41340/98. 41342/98 41343/98 ... and The United Communist Party of Turkey v. Turkey, judgment from 30/01/1998, Application no. 19392/92.
18 Stankov and the United Macedonian Organization Ilinden v. Bulgaria, judgment from 03/10/2001, on Applications no. 29221/95 29225/95 29221/95 29225/95 § 97.
19 Müller and Others v. Switzerland, cited above §33.

In the case the Vereinigung Bildender Künstler v. Austria, the Austrian courts prohibited the Association of Applicants from further exhibiting the image "Apocalypse" by Otto Müller [20]. Such decisions impeded the right of the Association of Applicants to freedom of expression. Namely, the Court did not accept that the Austrian authorities, when banning the exhibition of the painting in question sought no other purpose other than the protection of the individual rights of Mr. Meischberger (a former general secretary of the FPÖ, who at the time of the events was a member of the National Assembly) which together with 33 other people from the public and political spheres were shown in the painting. Accordingly, the argument of the national courts that the interference pursued legitimate aim to protect public morality was not satisfactory for the Court. The painting used only photos of the heads of the affected people, their eyes were covered with black ribbons, and their bodies were painted in surreal and exaggerated manner. The court considered that such portrayal had led to caricature of the persons concerned by use of satirical elements.

In other cases, the Court has emphasized that "satire is a form of artistic expression and social commentary, and with its inherent characteristics of exaggeration and distortion of reality, it naturally aims to provoke and agitate it." Accordingly, any interference with an artist's right to such expression must be examined with particular care.

In this particular case, the painting could not be understood as reference to the details of the private life of Mr. Meischberger, but more as in relation to the public standing of Mr. Meischberger as a politician and that he "in that capacity should prove broader tolerance with respect to criticism"[21]. Another additional element the Court found as violation of the right to freedom of expression was the fact that the Austrian courts' injunction was not limited in time or space. This approach did not leave the Association of Applicants (which at that time ran one of the most famous Austrian galleries specializing in contemporary art) a possibility to expose the contested painting later on.

1.3. Freedom of expression of civic associations

In the case Steel and Morris, the Court gave wider indication of the importance of freedom of expression through the work of civil society organizations. Namely, in this case, the applicants, Mrs. Steel and Mr. Morris were members of the London Greenpeace NGO. In the mid-1980s, London Greenpeace launched a campaign related to McDonald's. The brochure was entitled "What's wrong with McDonald's?" was printed and published. Since in 1986, London Greenpeace was not registered and did not have the status of a legal entity, legal action could not be taken directly against them, and so "McDonald's" filed a case against the applicants seeking damages of £100,000 British pounds for defamation caused by the publication of the brochure. As a result of this procedure, the applicants were fined for pecuniary damages to McDonald's, thus Mrs. Steel was fined with a total of £36,000 and Mr. Morris for a total of £40,000.

In relation with the published brochure unlike the national courts, the Court found that "... the brochure contains very serious allegations on topics of public interest, such as agriculture which has been misused, deforestation, cancer, exploitation of children and their parents through aggressive advertising and selling unhealthy foods. The court has long argued that "political expression", including the expression of matters of public interest and care, requires high level of protection under Article 10."

It was indisputable for the Court that "... in a democratic society, even in small and informal campaigns such as that of London Greenpeace, persons or other entities must be able to continue their activities effectively and that there is strong public interest in enabling such groups and individuals to contribute to public debate by disseminating information and ideas on issues of general public interest such as health and the environment.[22]" The Court held that there had not been achieved a real balance between the need to protect the applicants' freedom of expression and the need to protect the rights and reputation of McDonald's. In addition, the imposed penalty was undoubtedly disproportionate to the legitimate aim.

20 Vereinigung Bildender Künstler v. Austria, judgment from 25/01/2007, Application no. 8354/01.
21 Lingens v. Austria, judgment from 08/07/1986, Application no.9815/82.
22 Steel and Morris v. The United Kingdom, judgment from15/02/2005, Application no. 68416 / 01§§, 89.

2. The state's obligation to ensure freedom of expression

The starting point in the debate on the right to freedom of expression should be the positive obligation of the state to help the respect of this right, in case it is threatened to find a form to protect, affirm, and promote it. Each State part of the Convention must exercise its positive obligation and ensure that persons enjoy the freedom of expression and the right to communicate effectively between them. Whether the positive obligation of the state is applicable, in a particular situation will depend on whether it "has fair balance between the general interest of the community and the interests of the individual[23]". In the case Appleby v. The United Kingdom, the Court pointed out that "... the scope of this obligation will vary, taking into account the diversity of situations existing in the Contracting States and the decision that must be made in relation to priorities and resources. Such obligation must be interpreted so as not to impose impossible or disproportionate burden on the authorities.[24]"

The scope of the positive obligation of the state varies "... depending on the factors of distributive justice and the equitable allocation of resources required for various administrative tasks"[25]. In determining whether there was positive obligation, as "... relevant factors, the Court considers: the type of rights expressed in question; whether they are in the public interest; their capacity to contribute to public hearings; the nature and extent of the restriction of the right to expression; the availability of alternative spaces for expression and the severity of compensatory rights of others or the public.[26]"

The positive obligation of the state with regard to freedom of expression has proved to be applicable in various situations in judicial practice. The Court takes the view that the essential subject of most of the Convention's provisions is to protect individuals from arbitrary interference by public authorities, and therefore it can be regarded as a positive obligation to fully respect the right to freedom of expression. State parties should create favorable conditions for participation in public debate by all stakeholders, enabling them to express their opinions and ideas without fear[27]. The positive obligation requires the state to prevent the realization of threats of violence directed against private individuals against other private individuals, such as journalists, politicians and other public figures.

For example, in the case Özgür Gündem v. Turkey, the Court took the view that Turkey had a positive obligation to undertake investigative and protective measures when journalists and employees of newspaper were campaigning for violence and intimidation by private individuals, which included threats of murders, attacks, embedded explosions... Despite the numerous requests from the newspaper and the staff, the Turkish authorities did not take effective steps to prevent these acts, which left the Court with the strong impression that the campaign of violence was at least tolerated by the authorities[28]. In the case Fırat Dink v. Turkey, a journalist with Armenian origins, who was a publication director and an editor-in-chief of Agos, a bilingual Turkish-Armenian weekly newspaper published in Istanbul, in a period of four months published eight articles in which he expressed his opinion on the identity of Turkish citizens of Armenian origins. A criminal complaint was brought against him by an extremist group and he was convicted for comment on the Armenian issue, i.e. due to the denigration of Turkish identity. In public, ultranationalist groups presented him as a journalist who offended all persons of Turkish origins and as a consequence; a nationalist extremist later killed him[29].

In cases such as this, the State's duty is not only to refrain from any kind of interference in the statement made by the journalist but also rather to protect his right to freedom of expression from attacks, including the attacks of private individuals or groups.

23 Ozgur Gundem v. Turkey § 43, judgment from 16/03/2000, Application no. 23144/93.
24 Rees v. The United Kingdom, judgment from 17/10/1986, Application no. 9532/81 § 37, and Osman v. The United Kingdom, judgment from 28/10/1998, Application no. 23452/94 23452/94.
25 Appleby v. The United Kingdom (Application no. 44306/98, judgment from06/05/2003) §§ 42 and 43.
26 Harris, D.J., M. O'Boyle, E. P. Bates, C. M. Buckley (2009) Law of the European Convention on Human Rights, Second edition Oxford University Press, p. 446.
27 Dink v. Turkey, Application no. 2668/07, judgment from 14/09/2010, Applications no. 2668/07 6102/08 30079/08 § 137.
28 Özgür Gündem v. Turkey, cited above.
29 Dink v. Turkey cited above.

In the case Fuentes Bobo v. Spain, the Court pointed out that the positive obligation, inter alia, consisted in the duty of the government to protect the freedom of expression and its restriction by private persons. In this case, the applicant, who was a journalist on radio program, was fired because of his publicly expressed critical attitude towards the leadership of the radio. The court took the view that despite the state's position that the radio was private, the Spanish government had positive obligation to protect freedom of expression from threats coming from private individuals. The court finds that dismissing the journalist from work due to given valuation constituted a restriction to his freedom of expression[30].

The notion of positive obligation is of particular importance in relation to access to information that deserves particular attention. The Court is aware that "journalistic freedom covers possible recourse to some degree of exaggeration or even provocation", but with the condition that the limits of permitted criticism are narrower in relation to private citizens than criticism of politicians and governments[31]. In that relationship, "...The role of journalists in a democratic society is essential. Although journalists cannot cross certain boundaries, especially when it comes to the reputation and rights of others and the need to prevent the disclosure of certain confidential information, it is their duty to transmit the information - in manner and in accordance with their obligations and responsibilities - information and ideas on all issues of public interest[32] ".

Contrary to the previous case, in the Palomo Sánchez and Others v. Spain case, the applicants maintained that their dismissal based on published caricature in union newsletter, violated their rights with regards to freedom of expression. In addition, that the real reason for their dismissal was their activities in the trade union, which resulted in violation not only of the right to freedom of expression, but also of their right to assembly and association. Namely, a disciplinary measure was taken against the applicants, by their employer due to serious violations of the working discipline, he dismissed them. Later, the domestic courts confirmed the measure. The Grand Chamber did not find violation of the right to freedom of expression, since, according to the circumstances of this case, the dismissal measure imposed on the applicants was not disproportionate in order to oblige the State to determine the compensation by annulling it or replacing it with a measure that is more lenient[33]. When it comes to journalistic freedom of expression, it must be borne in mind that journalism has the role of conveyance of information and ideas, and the public has the right to receive such information. Otherwise, journalism will not be able to exercise its role of "public watchdog" critic and guardian of progress and democracy, and therefore it is necessary to accept the positive obligation of the state to preserve and protect freedom of expression, and in doing so, especially journalistic freedom of expression.

What forms of legal protection will be provided by the state, with regards to the fulfillment of positive or negative obligations with respect to the right to privacy and with regard to the freedom of expression of persons, is an integral part of the margin of appreciation enjoyed by it in the Convention system. When practicing the tripartite test of balancing these two rights, the Court continuously emphasizes that it is not in a better position compared to national authorities with regards to the application of national law and the establishment of facts.

In the case Lillo-Stenber and Sæther v. Norway, the government of this country before Strasbourg has built its arguments in the defense of the case on the basis of the Brighton Declaration, indicating that the Norwegian Supreme Court exercised the balancing test in accordance with the criteria of the case law of Strasbourg and with a focus on the doctrine of broad margin of respect for the state in such cases[34]. In analyzing the margin of appreciation, the starting point is that both the right to privacy and freedom of expression are qualified and not absolute rights and in that part when analyzing the case on freedom of expression and the application of the margin of appreciation, the Court makes the analysis from the angle of the possible obstruction or restriction of this right. When there is a case related to the right to privacy and the state's reference to the margin of appreciation, the analysis of the Court starts from the positive obligations of the state to protect the right to privacy.

30 Fuentes Bobo v. Spain, judgment from 29/02/2000, Application no. 39293/98.
31 Prager and Oberschlick v. Austria, judgment from 26/04/1995, § 45, Application no. 49017/99.
32 Unabhängige Initiative Informationsvielfalt v. Austria judgment from 26/02/2002, Application no. 8525/95 § 37.
33 Palomo Sánchez v.Spain, Grand Chamber judgment from12/09/2011, Application no. 28955/06 § 60.
34 Lillo-Stenberg and Sæther v. Norway, Application no. 13258/09, judgment from 16/01/2014.

3. Journalists and journalistic expression

In recent years, in the Republic of Macedonia, the journalists themselves as well as numerous international organizations prompted many debates on journalistic freedom of expression. Although the first cases on which the court laid the foundations for the principles and standards for the right to freedom of expression are related precisely to journalistic freedom of expression, in the Republic of Macedonia very little space in those debates was devoted to the already established case law in relation to journalistic expression. In addition, today, taking into account the modern forms of information transmission and dissemination, the treatment towards journalists and, on the other hand, to the journalists in accordance with journalistic ethics has become particularly important[35].

The Court has repeatedly pointed to the obligations and responsibilities of journalists, to act in good faith and the intention to transmit accurate and reliable information. This approach can be applied by analogy to those involved in public debate, such as NGOs and even judges and public prosecutors. Regarding judges and public prosecutors, their public appearances through interviews or debates are extremely important, but they always must be guided by a great deal of discretion in the performance and sometimes by refraining, in order not to question the reputation and impartiality of their positions and not to violate the presumption of innocence[36].

Regarding the obligations and responsibilities in practicing journalistic freedom of expression in the case Pedersen and Baadsgaard v. Denmark, the Court pointed out "... these duties and responsibilities are the basis for determining their significance when raising the question of attacking the reputation of a particular individual and in the infringement of the rights of others. Thus, special conditions are required before the medium is released from the regular obligation to check the actual statements that would be defamation for the individual. Whether such a basis exists depends in particular on the nature and degree of defamation in question and the extent to which the media can reasonably consider its sources as reliable in relation to allegations." Therefore, the need to check statements containing facts grows by the insulting or defamatory nature of the statement[37].

In the case Bladet Tromso and Stensaas v. Norway judgment, the starting point is that the journalist's speech should not be subject to the requirement that journalists systematically and formally distance themselves from the content of the quote that can offend, provoke others, or harm their reputation[38]. The Court did not fail to emphasize that such rigorous approach would be contrary to the principle of the widest possible scope of protection that must be given to the press and journalistic expression[39]. In the case Verlagsgruppe News GmbH v. Austria, an artist, criticizing politicians from the Austrian Freedom Party, described them as " cowards". The Strasbourg court did not share the opinion of the national courts, and pointed to the formality in the approach that is inconsistent with the proportionality test that when it comes to a politician, it requires the public interest to override the private interests of the politician[40].

3.1. Duty to transmit information

Many times, in the case law has been established, and in this publication, we will emphasize in several places, that the standards of the Strasbourg Court of Justice's practice for protecting journalistic freedom of expression clearly indicate that "... the freedom of journalistic expression refers not only to "information" or "ideas" that are positively received or regarded as inoffensive or as matter of indifference, but also to those who insult, shock or disturb. Such are the demands of pluralism, tolerance, and freedom of thought without which there is no "democratic society". Although the media must not exceed

35 Stoll v. Switzerland, judgment from 10/12/2007, Application no. 69698/01.
36 Wille v. Liechtenstein, judgment from 28/01/1999, Application no. 28396/95.
37 Pedersen and Baadsgaard v. Denmark, judgment from 17/12/2004, Application no. 49017/99
38 Bladet Tromso and Stensaas v. Norway, judgment from 20/051999, Application no. 21980/93 § 65.
39 Thoma v. Luxembourg, judgment from 29/03/2001, Application no. 38432/97 § 58.
40 Verlagsgruppe News GmbH v. Austria, judgment from 14/12/2006, Application no. 76918 / 01§33.

certain borders, it is their duty to transmit, in a manner consistent with their obligations and responsibilities, information and ideas on all issues of public interest.[41]"Moreover, not only the media are tasked with transmitting such information and ideas, but also the public has the right to receive them.[42]

European and world public freedom presented the European Court of Human Rights judgment on Selmani and Others as a judgment that has and will have global impact on the promotion of journalistic freedom and the duty of journalists to transmit information of public interest[43]. The work of the Assembly and the behavior of the MPs during the Assembly sessions are in the spotlight during the normal functioning of the Assembly, and even more when there is tense discussion on important issues that raise concerns among the public. The focus of the judgment on the Selmani and Others case, is precisely the journalistic duty to transmit information about the work of the Assembly, in unusual circumstances as events of broad public interest and as integral part of the right to freedom of expression. In addition, since the duty to transmit information of public interest is of the utmost importance to the journalistic profession, the Strasbourg Court has given treatment to this case as a leading case in the course of the proceedings. It reflects and presents the problems related to the right to transmit information through analysis of the important issues that the journalists from the Republic of Macedonia brought before the European Court of Human Rights.

In the analysis that follows, we will cover and explain why this judgment has impacts on the rights of journalists not only on a European, but also on a global level, and we will point out its impact on the improvement of journalistic freedoms in the Republic of Macedonia in similar if not same situations. Based on the problems identified by the European Court of Human Rights and on the basis of the relevant case law, this analysis will offer recommendations for the advancement of journalistic protection, especially regarding the reporting and transfer of information from the Assembly sessions.

3.1.1. The facts about the events with the journalists on December 24, 2012

Six Macedonian journalists[44],brought a case related to journalistic freedom to transmit information of public interest and unfair trial over their request for the protection of this freedom, before the Court in Strasbourg, because the Constitutional Court ruled upon their request for the protection of freedoms and rights without public and oral hearing. This case refers to the forcible removal of these and other journalists from the Parliament Gallery, a space for reporters accredited to report on the work of the Assembly where they reported on the parliamentary session on December 24, 2012, when was held the parliamentary debate on the Budget Law for the next year. The MPs had long and tense discussion while at the same time two opposing groups protested in front of the Parliament building. The tense atmosphere culminated in the violation of the order in the Assembly hall by a group of MPs who surrounded the President of the Parliament and made noise by slamming on his table. The parliamentary security pulled out the Speaker and proceeded forcibly to remove opposition MPs from the hall and at the same time journalists from the gallery. During the disorder in the hall, the journalists were passive observers who did their job and followed the events. They neither contributed nor participated in the violation of the order in the hall and did not pose any threat to public security or order in the hall. There are no indications that the violation of order by lawmakers in the hall will endanger the lives and physical integrity of journalists. On the intervention of the parliamentary security, some of the journalists refused to leave the gallery as indicated by the security, but their behavior did not result in any procedures for imputing guilt on them in this regard. Parliamentary security forcibly removed journalists from the gallery.

Journalists sought protection of their freedom of expression before the Constitutional Court, which rejected their request, although it felt that the act of their removal from the gallery at the Assembly Hall was obstruction to the journalists' rights to keep their duty undisturbed and to inform the public of an event that undoubtedly was of great importance for the citizens of the Republic

41 See Bladet Tromsø and Stensaas v. Norway [GS], No.21980 / 93, § 59, ECHR 1999-III; De Haes and Gijsels v. Belgium, judgment from 24/02/1997, § 37, Reports of judgments and decisions 1997-I; and Jersild v. Denmark, judgment from 23/09/1994, § 31, Series A No.298.

42 See The Sunday Times v. The United Kingdom (no. 1), from 26/04/1979, § 65, Series A No.30

43 Selmani and the Others v. the Republic of Macedonia, Application no. 67259/14, judgment from 09/02/2017.

44 Journalists accredited to inform the Assembly of the Republic of Macedonia (Mr. Naser Selmani, Mr. Toni Angelovski, Mrs. Biljana Dameska, Mrs. Frosina Fakova, Ms. Snezana Lupevska and Mrs. Natasha Stojanovska).

of Macedonia. This court accepted the fact that the physical removal of journalists from the gallery was required due to the actual situation and escalation of disorder in the hall and it was intended to protect and ensure order in the hall, and not to prevent them from performing their activity to inform the public and to limit their freedom of expression. The only relevant element on which the Constitutional Court relied in its conclusion that the applicants were not safe was that "in the hall were thrown objects, some in the direction of the gallery". Since no public hearing was held, journalists were deprived of the opportunity to contest the facts in an oral hearing on which the Constitutional Court based its decision on the security risks for them[45].

3.1.2. What the European Court of Human Rights has determined

In the judgment delivered on 10 January 2017 and published on 9 February 2017, the Strasbourg Court found violation of the right to fair trial due to unsupported oral hearing by the Constitutional Court and violation of journalistic freedom of expression. It was established that the right to report from the Parliamentary Gallery, which falls within the freedom of expression of journalists, is a "civil right" and that in the proceedings before the Constitutional Court, which was court the first and only instance , the right to "public hearing" entails the right to "oral hearing" unless there are exceptional circumstances justifying the failure to hold such a hearing, and there were no such cases in this case. Especially because the Rules of Procedure of the Constitutional Court stipulate, as a rule, individual constitutional complaints to be resolved at a public hearing in the presence of the parties.

In assessing whether it was necessary to remove the journalists from the gallery by the security service of the Parliament, the Court in Strasbourg had taken into consideration that the interests to be measured in the present case were of public nature, i.e. the interests of the security service to maintain the order in Assembly and provision of public security, as well as the interests of the public to receive information on issues of public interest. It was therefore most important to determine whether the interference with journalistic freedom, viewed as a whole, was supported by relevant and sufficient reasons and whether it was proportionate to the desired legitimate aims. Furthermore, whether the removal of journalists was based on a reasonable assessment of the facts and whether they were able to report on the incident in the Parliament, as well as any behavior in the particular situation.

Undoubtedly, the removal of journalists from the Parliamentary gallery from where they reported on the parliamentary session and subsequent incidents in the hall represented "interference" with their right to freedom of expression. Such interference was prescribed by law regulations[46], based on which the Speaker ordered the security service to take measures whose legitimate aim was to ensure public safety and to prevent violation of order. The Court in Strasbourg assessed that although there was a legitimate base that had a legitimate aim, the interference with journalistic freedom to transmit information of broad public interest was not necessary in the conditions that followed the event in the Parliament of the Republic of Macedonia and sent strong message regarding the protection of the journalistic freedom.

The Court assessed that the violation of order in the Assembly Hall and the manner in which the authorities dealt with it, were issues of strong public interest. The media had the task of transmitting information about the event, and the public had the right to receive such information and on this principle in many previous cases, the Court has established that the role of the media as "watchdogs of the public order" is of particular importance in the context of events of broad public interest.

The Court pointed out that the presence of journalists is guarantee that the authorities that have available means of coercion may be responsible for their conduct vis-à-vis the protesters and the public as whole, when it comes to controlling large gatherings, including the methods they have used to control or disperse protesters, participants in violent events or to preserve public order. Therefore, any attempt to remove journalists from the site of demonstrations, disorder, or other gatherings must be subject to strict control.

45 See Baka v. Hungary [GS], Application no. 20261 / 12, § 161, ECHR 2016; Karácsony and Others, cited above, § 133; And Lombardi Vallauri v. Italy, Application no. 29128/05, § 46, judgment from 20/10/2009.

46 Article 43 of the Law on the Assembly and Articles 91-94 of the Rules of Procedure of the Assembly.

One of the most important preconditions for responsible journalism regarding the transfer of the work of the Assembly is that journalists can exercise their right to transmit information to the public about the behavior of the elected MPs in conditions that are not always representative of them and the manner in which the authorities deal with the violated order that occurs during Assembly Sessions.

In the case Selmani and the other five journalists, the removal from the Assembly Hall included immediate adverse effects which at that moment prevented the journalists from receiving firsthand information directly from a personal experience of the events that took place in the hall, and thus on the handling of Security services in the Assembly. The performance of the journalistic function is particularly important, and the public should not be deprived of the transmission of information from such important events. Undoubtedly, the removal of journalists from the gallery was not necessary in a democratic society and did not meet the requirement of an "urgent social need".

The judgment in case Selmani and the other v. Macedonia for Strasbourg was an opportunity to analyze and distinguish from situations where the life and safety of journalists were really questioned and when the intervention of the security authorities was indispensable. Therefore, unlike the judgment in the case Pentikanen v. Finland, the Selmani and the Others' judgment focus on the necessity of transmitting "first hand" information or the need for "effective observation" of events in the Assembly. Transparency of the work of Parliaments in parliamentary democracy implies transparency of events that contain elements of news that shock, disturb and are not acceptable to the majority public, but it objectively transmits situations and events important to the wider society.

3.1.3. What are the benefits of the Selmani's judgment?

Immediately after the judgment on Selmani and Others v. Macedonia was announced, it drew considerable attention from the academic community, human rights defenders and other international courts. For example, Strasbourg observers, only five days after the announcement, emphasized "... the Court's finding that the removal constitutes violation of the right to freedom of expression is a valuable recognition, in a global context where a number of states use similar measures to damp down reporting on parliamentary issues.[47]

"The International Forum of Responsible Media Blogging accepts this analysis and shares the conclusion that "... this judgment constitutes a useful guide to the world's courts when they have to take into account the consequences of removing or obstructing the media to report from Parliament ...[48]"

Columbia University in New York made a presentation on the judgment in Selmani's case by pointing out "... this judgment extends the expression, recognizing that the removal of journalists from Parliament may constitute violation of the right to freedom of expression, especially when journalists are passive observers of disturbing activities of other individuals in a parliament.[49]"

Journalists in the Republic of Macedonia and their associations for many years have shown proactive attitudes towards the protection of their rights, so it is not surprising that the first case that ended with a judgment related to freedom of expression in Strasbourg came precisely from journalists. This case reflects the difficulty in carrying out the journalistic profession in conditions that apply the use of physical force by authorized bodies in cases when the public was interested in the events in the Assembly. The interest was even greater when the tense atmosphere culminated in the forcible removal of MPs and journalists.

47 This influential portal has analyzed previous cases of limiting journalistic freedom of information conveying and parliamentary events in Poland, Myanmar, Uganda, Kenya, Zambia, South Africa, and Tanzania. Strasbourg Observers, Selmani and Others v. The Former Yugoslav Republic of Macedonia: influential judgment on press galleries and parliamentary reporting (https://strasbourgobservers.com/2017/02/14/selmani-and-ors-v-fyrom-influential-judgment-on-press-galleries- And-parliamentary-reporting /)

48 https://inforrm.wordpress.com/2017/02/15/case-law-strasbourg-selmani-and-ors-v-the-former-yugoslav-republic-of-macedonia-influential-judgment-on-press- Galleries-and-parliamentary-reporting-jonathan-mccully /

49 https://globalfreedomofexpression.columbia.edu/cases/selmani-v-macedonia/

Judgment on case Selmani and the Others v. Macedonia is a solid basis for drawing conclusions that democracy requires even when the image of the Parliament, seen through the events is not acceptable, to accept it and to be transferred from journalists whose obligation is to fight for the objective transfer of first-hand information. There is no doubt that there is a legal framework for the intervention of parliamentary security in cases when there is a need to establish order in the Assembly or to protect the life of MPs, journalists or other persons present in the Assembly Hall. However, this was not such a situation with regard to the journalists and it was not necessary to apply force to remove them.

It is important that applicable legal and secondary legislation be properly applied in their practice. Given the current legal framework (Law on Parliament and the Rules of Procedure of the Assembly), it seems it is much more important to properly implement these acts and to build culture of openness towards the public issues and situations that do not bring positive representations of politicians in the public. Strasbourg judgments related to journalistic freedom of expression and, in particular, this judgment may serve as a basis for building good positive policies by those who practice power (politicians, police, security officers, prosecutors, judges). In many countries, the lack of legal solutions is filled by building good practices that rest on the goodwill of policymakers.

This case and several cases that followed (for example, the events of the intrusion in the Assembly on 27 April 2017 indicate alarming and urgent need to introduce education and training on human rights. In particular, the freedom of expression of parliamentarians, the parliamentary security, the police and other holders of power who are in a position to influence the restriction of freedom of expression. For these reasons, it would be useful to organize joint round tables with journalists as well as debates and establishing a dialogue.

The judgment for Selmani's case may serve to amend the Rules of Procedure of the Assembly with provisions that will guarantee more effectively freedom of expression by refraining from arbitrary interference by the authorities. It points to a lack of political culture in the perception of the place and role of journalists in the Assembly.

An equally important aspect that this judgement raises is the indication that the proceedings related to the protection of freedom of expression before the Constitutional Court should be public with the possibility for an oral hearing. The publicity of judicial protection as the protection of media freedom ensures that the judicial system is open to public oversight in the practice of law and justice. In fact, the Rules of Procedure of the Constitutional Court stipulate that upon requests for protection of freedoms and rights, the Court decides upon public hearing, attended by the Ombudsman. This is another confirmation that in the existence of legal framework it should be practiced correctly.

3.2. Protecting the source of information

The sentencing to the journalist who refused to disclose the source of financial information problems in the British company in the case of Goodwin v. the United Kingdom was the basis for the Court to discuss the protection of the source of information and whether it falls under the protection of freedom of expression[50]. Namely, this British journalist, having received information from a certain source from the company, contacted the company to verify the truthfulness of the information and found that it was contained in entrusted internal reports of the company. These events ended with a Court order for the journalist and the newspaper for which he worked to uncover the source of the information and forbidding the publication of the information.

This case is extremely important, as through it the Court took the view that the prohibition on disseminating information to which the journalist came, and the order to disclose the source of the information had the same basis. There was no "urgent social need" that would set the company interests above the public interest and that the protection of the source of information falls under the protection of the right to freedom of expression.

50 Goodwin v. The United Kingdom, judgment from 27/03/1996, Application no. 17488/90.

In the case Ernst v. Belgium, a significant number of cases were confiscated after search of the editorial room and journalists was carried out, although journalists were not charged in the criminal proceedings that led to the search. The Court finds that such an approach was disproportionate to the legitimate aim pursued by the organs[51]. Of course, the Court practice shows that the protection of journalistic sources is not absolute, but it is clear that it has strong backing for the protection of the right to freedom of expression.

3.2.1. Access to information

Current case law in relation to access to information regarding private individuals did not raise this issue under freedom of expression[52].

For example, in the distant 1987 in the Leander case, the Court sent a message that access to information is not related to freedom of expression[53]. Since Mr.Leander's request for the establishment of temporary employment relationship in museum in Sweden was refused due to security reasons, after exhausting domestic remedies with which he requested explanation for these reasons, he filed a procedure before the Strasbourg Court, referring to the freedom of expression and the right to access information that the state has violated. The Court took the view that the right to freedom of expression does not apply to individual right to access registered information as in the circumstances of this case and does not oblige the State to transmit such information to a private person.

Two years later, the Court retained this approach in the Gaskin case, which was linked to the State's refusal to allow the applicant access to his file with childcare data[54].

Somewhat later, in the Guerra case, the freedom to obtain information based on the restriction of freedom of expression, the Court reduced it to the negative obligation of the State, i.e. it does not interfere with the exchange of information between private persons inter se[55].

In the Sirbu case, the Court pointed out that the freedom to receive information in accordance with Article 10 § 1 of the Convention cannot be regarded as "an imposing positive obligation on the State in situations such as that in the present case, to disclose secret documents to the public or Information relating to the military, intelligence services or the police.[56]"

51 Ernst and Others v. Belgium, judgment from 15/07/2003, Application no. 33400/96.
52 McGinley v. The United Kingdom, judgment from 28/01/2000, on Applications no. 21825/93 23414/94.
53 Leander v. Sweden, Application no. 9248/81 from 26/03/1987
54 Gaskin v. The United Kingdom, judgment from 07/06/1989, Application no. 10454/83.
55 Guerra and Others v. Italy, Application no. 14967/89, judgment from 19/02/1998.
56 Sîrbu and the Others v. Moldova, on Applications no. 73562/01 73565/01 73712/01, judgment from 15/06/2004.

4. Restriction of freedom of expression

Freedom of expression is elevated to the level of the fundamental principle of life in democracy, and therefore any restriction, even when based on hate speech, must be carried out with filigree precision of clear substantiation with explanation that will confirm the necessity of the concrete limitation and whether it was necessary in a democratic society. This right may be restricted by one or more of the reasons specified in Article 10 § 2 of the Convention provided that there are clear legal bases that provide for procedural and substantive guarantees.

In the case Handyside v. The United Kingdom, the Court pointed out that "... the machinery of protection established by the Convention is subsidiary to national systems for the protection of human rights" and that the Convention leaves to any Contracting State "... in the first place, the purpose of securing the rights and freedoms that it protects." This approach applies both to the restriction of freedom of expression and thus to the Court "state authorities are in principle in better position than international judges in giving opinion on the exact content of these requirements, and the "necessity" of "restriction" or "penalty"[57].

In addition to the determination of the restriction of freedom of expression in clear, precise, predictable law, it is important for the Court of Strasbourg whether the restriction through the pronounced measure or punishment corresponds to the objective to be achieved, especially when it comes to freedom of expression. In so doing, the Court takes into account the nature and length of the measure, which means limiting freedom of expression in order to determine whether they were proportionate to the aim pursued. The Court takes into account the existence of other alternative measures that would have less impact on freedom of expression, but would achieve the legitimate aim. In the case Lehideux and Isorni, concerning the "existence of other means for intervention and disobedience, in particular through the application of remedies in civil proceedings," the Court found that the criminal proceedings were disproportionate to the pursued aim.

In the case Incal v. Turkey, the applicant was punished with various sanctions, starting from exclusion from the union, from activities in political organizations at a time when he was a member of the executive board of the opposing political party, termination of employment as a civil servant and to criminal responsibility. For the Court, the termination of his contract as teacher at a private school was disproportionate to the pursued aim[58].

In the case Erbakan v. Turkey, in addition to being fined, the applicant was sentenced to one year in prison and received a ban on exercising more civil and political rights. For the Court of Strasbourg, these were undoubtedly very strict penalties for a well-known politician, exercising his freedom of expression, having in mind that, a too high fine could be the basis for a disproportionate approach by the authorities, if such a punishment acts as an obstacle to the realization of one's freedom of expression[59].

The second paragraph of Article 10 of the Convention rests on the provision that the exercise of the right to freedom of expression includes obligations and responsibilities and may be applied under conditions laid down by law "which in a democratic society constitute measures necessary for national security, territorial integrity and public security, order protection and the prevention of disorder and crime, the protection of health or morals, the reputation or rights of others, to prevent the dissemination of classified information or the preservation of priorities and impartiality of the judiciary. "

The obligations and responsibilities of Article 10 para. 2 of the Convention from the previous case-law relate to various "holders of the right to expression" including politicians, lawyers, civil servants, journalists, editors, authors, publishers and even artists, as are writers[60].

57 Handyside v. The United Kingdom, cited above, § 48.
58 Incal v. Turkey cited above
59 Erbakan v. Turkey, on Applications no. 32153/03 32155/03, judgment from 20/10/2009.
60 Harris, D.J., M. O'Boyle, E. P. Bates, C. M. Buckley (2009) Law of the European Convention on Human Rights, Second edition Oxford University Press p. 494.

When facing a question related to the restriction of the right to freedom of expression, the Court analyzes the case in its entirety and in the context of the circumstances surrounding the case. The main issue for the Court is whether the applicant intended to spread ideas and opinions with hate speech or attempted to transmit information of public interest.

When deciding on cases relating to the right to freedom of expression, judges must constantly have in mind that "The rule is freedom of expression, and any restriction on freedom of expression must be an exception." Restricting freedom of expression can be justified only by "imperative necessity" and this requires that it be compulsory to check if there is "urgent social need" for such restriction. Exceptions to the limitation of this freedom must be interpreted and practiced very strictly and clearly. In assessing whether the restriction on freedom of expression was in conformity with the Convention Law, the Court established three important standards: the prescribed measure (restriction) should be prescribed by law, have clear legitimate aim and whether such a limitation is necessary in democratic society.

The first standard rests on the test of legal validity and therefore, the state must clearly indicate based on which law it has limited the freedom of expression in the specific case. In doing so, based on the second standard, must give precise answer, explain, and justify the legitimate aim of that procedure. The third standard rests on seeking answer to the question of whether the applied restrictive measure as "necessary in democratic society" provides a proportional and fair balance between the means employed and the individual freedom of expression.

4. 1. Prescribed by law

Regarding the legal requirements for the possible restriction of freedom of expression, the standard "prescribed by law" includes not only written regulations but also, the legal culture of common law in the countries. Therefore, the Court accepted two sub-tests: accessibility and predictability of the law. Accessibility is deemed to be fulfilled if the applicant's proceedings indicate that he "had indications that it was appropriate to the circumstances of the legal rules applicable to the particular case"[61]. Predictability in turn, implies a rule that is "created with sufficient precision to enable the citizen-if there is a need, with the appropriate advice-to predict to the extent that is reasonable in the circumstances, the consequences that particular activity may include.[62]"

Predictability in judicial practice is clarified by the conditionality of three factors: the content of the impugned statement, the area covered and the number and status of those to whom it is addressed.

4. 2. Legitimate goal

The exercise of the right to freedom of expression includes obligations and responsibilities. It can be limited only under conditions, with restrictions and sanctions strictly provided by law and which in a democratic society constitute measures necessary and exclusively for the purpose of: protecting national security, protecting territorial integrity, protecting public security, protecting against unrest and crimes, health protection, morale protection, reputation or rights of others, preventing the dissemination of confidential information or preserving the authority and impartiality of the judiciary. Each of these grounds has been elaborated and substantiated by the Court's case law and no other ground could be accepted as a legitimate aim.

61 Sunday Times v. The United Kingdom, judgment from 29/11/1991, Application no. 13166/87.
62 Perrin v. The United Kingdom, judgment from 18/10/ 2005, Application no. 5444/03.

4. 3. Necessity in democratic society

State Party are given a certain margin of appreciation in assessing the existence of an "urgent social need" from the application of restrictive measures and in the choice of the measures, they apply. State Party do not have unlimited power in such assessment and should always offer "relevant and satisfactory explanations." In assessing whether the restriction on freedom of expression was in conformity with the Convention law, the Court sees the specific case in its entirety, including the content of the alleged expressions and the context in which they were made.

The Court takes particular account of determining whether the limitation in the present case was "proportionate to the legitimate aim pursued" and whether the national authorities' rationale was "relevant and satisfactory". It is important to determine whether the national authorities applied the standards embedded in the right to freedom of expression and whether the authorities were guided by acceptable assessment of the relevant facts. In assessing whether there was urgent social need that would justify the restriction of freedom of expression, careful delineation was made in each particular case whether the information consisted in the disclosure of facts or whether it was a matter of evaluation[63].

4.4. Strictness of the pronounced sentence

The Court takes care that, when limiting a particular right or freedom, the pronounced measure or punishment corresponds to the aim pursued, especially when it comes to freedom of expression. In order to gain a clear picture, the nature and length of the measure or the amount of the sentence, which limits the freedom of expression, shall be taken into account in order to determine whether they were proportionate to the aim pursued. It is important whether, in addition to the imposed restrictive measure, there are other alternative measures that would have less impact on freedom of expression, but would achieve the legitimate aim.

In the case Lehideux and Isorni, concerning the "existence of other means for intervention and disobedience, in particular through the application of remedies in civil proceedings," the Court found that the criminal proceedings were disproportionate to the pursued aim.

In the case Incal v. Turkey, the applicant was punished with various sanctions, starting from exclusion from the union, from activities in political organizations at a time when he was a member of the executive board of the opposing political party, termination of employment as a civil servant and to criminal responsibility. For the Court, the termination of his contract as teacher at a private school was disproportionate to the pursued aim[64].

In the case Erbakan v. Turkey, in addition to being fined, the applicant was sentenced to one year in prison and received a ban on exercising more civil and political rights. For the Court of Strasbourg, these were undoubtedly very strict penalties for a well-known politician, exercising his freedom of expression, having in mind that, a too high fine could be the basis for a disproportionate approach by the authorities, if such a punishment acts as an obstacle to the realization of one's freedom of expression.

Fines may constitute grounds for disproportionate approach by the authorities if such a punishment acts as an obstacle to the exercise of freedom of expression. In the case Tolstoy Miloslavsky, a historian who was prevented from publishing the results of his research on the involvement of an employee at a prestigious English school in military crime during World War II, the Court focused on the excessiveness of the amount of money received as compensation for the pronounced defamation[65].

63 Kasabova v. Bulgaria, from 19/04/2011, Application no. 22385 / 03.
64 Incal v. Turkey cited above
65 Tolstoy Miloslavsky v. The United Kingdom, judgment from 13/06/1995, Application no. 18139/91.

5. Case law relating to defamation cases

States may act in defamation cases within the meaning of Article 10, paragraph 2, in order to protect the rights of the others within the framework of civil or criminal procedures. In order to determine the proportionality of the measure taken at a national level, are analyzed: the nature of the State's interference in the exercise of freedom of expression, the applicant's position and the status of the victim of defamation or insult, which is the subject matter of the impugned statements and the reasons for the actions indicated by the national authorities[66].

There are numerous other factors, such as the circumstances that led to the contested defamation or insult, or the form in which the statement was made. For example, it is undisputed that through audio visual forms of communication, the insult and libel are transmitted more directly and quickly, or the statements given in the heat of a debate or a forum as spontaneous reaction may not cross the boundary between acceptable criticism and insult, which cannot be said for a written text[67].

The breadth and nature of the defamation and the insult are the starting point in determining the admissibility of the state reaction. In the cases related to journalistic freedom of expression and public figures, the Court generally gives journalism a privileged status. A principle has been established through the judicial practice that journalistic freedom may involve degree of exaggeration, or even provocation. This approach by analogy applies to members of non-governmental organizations. The duties and responsibilities of journalists require them to act "with good faith and accurate factual basis" to provide reliable and precise information in accordance with journalistic ethics[68].

6. Acceptability of criticism in relation to public figures

Judicial practice finds that permissible criticism of politicians is wider, compared to private individuals. When a politician withdraws from the political life, he again acquires the right to wider protection as other citizens[69]. Politicians must be open to greater criticism by journalists and the public. The conditional termination of criminal proceeding against journalists can be considered a form of censorship that could jeopardize freedom of expression. For example, in the case Dabrowski v. Poland, the journalist was accused of defamation after publishing an article in which he reported on criminal proceedings against a local politician. He described the mayor as "the mayor burglar," but the article was published after the national courts found that the mayor was guilty of failure. Finding violation of the right to freedom of expression, the Court pointed out that the mayor, as a public figure, should have demonstrated a greater degree of tolerance to criticism, which in this concrete case also contained value assessment based on a factual situation supported by the court judgment[70].

One of the older cases that laid the foundation of the approach towards politicians when it comes to freedom of expression, is of course, the case of Lingens v. Austria. In this case, the Austrian prime minister at that time, described the Jewish Documentation Center as "political mafia" as the president of the center approached the President of the Liberal Party of Austria, with which the prime minister negotiated for a post-election coalition, accusing him of serving in the former SS divisions. The applicant was found guilty of defamation under the penal law, when he accused the Prime Minister of "basic opportunism" and for behavior that was qualified as "immoral" and "indecent". Undoubtedly, the criminal sanction against the applicant for Court was disproportionate since he was asked to prove the valuation related to matters of a political nature[71]. Similarly, in the case Oberschlick, while writing an article about the leader of the Austrian Freedom Party, Jörg Haider, the journalist described him as "idiot." The Court's assessment was that this word was not in the form of a personal

66 Scharsach and News Verlagsgesellschaft GmbH v. Austria, judgment from 13/11/2003, Application no. 39394/98 § 31.
67 Fuentes Bobo v. Spain § 48.
68 Hachette Filipacchi Associés v. France, judgment from 14/06/2007, Application no. 71111/01 §40.
69 Tammer v. Estonia, judgment from 06/02/2001, Application no. 41205/98 § 68.
70 Dabrowski v. Poland, judgment from 19/12/2006, Application no. 18235/02 § 3
71 Lingens v. Austria, judgment from 08/07/1986, Application no. 9815/82 § 74.

assault towards the politician, but rather should be seen in the whole of the article and as such depicts "a judgment with value assessment" which has the basis to be protected by the right to freedom of expression[72].

6. 1. Fact-based and value-based statements

Any case related to defamation or insult, requires being determined whether it is fact-based statement or is a statement with a value assessment. A fact-based statement also imposes the obligation to prove those facts, while on the other hand, declarations about valuation do not require substantiation with evidence. Once it finds that the disputed statement involves a value assessment, the Court proceeds to determine "whether there is sufficient factual basis" to support that valuation[73]. Even valuation scores must be based on a certain factual basis, and the correlation between the factual basis and the valuation will vary depending on the circumstances of the case. In the case Lindon, Otchakovsky-Laurens, in the book titled "Jean Marie Le Pen's trial", the former leader of the French right-wing National Front party, has been described as "the boss of killer gangs" and as a "vampire." The French courts did not accept the reference to the principle of "good faith" because of the lack of substantiation of factual charges. The majority of the judges in the Grand Chamber considered that the national courts properly rendered libel as the book was based on fictitious claims and was not sufficiently substantiated with facts independently of a politician[74].

In the case McVicar, the Court underlined that "...in principle, it is not incompatible with Article 10, that in the process of a litigation for defamation there is search to prove the truth of a libel," namely, that the statement is accurate to the level of probability[75].The journalists accused of defamation, are not obliged to prove the truth in all aspects, if the authenticity of the statement is likely and leads to important public interest. When determining the truthfulness of a statement that the national courts have regarded as defamation, the Court proceeds with: broad and liberal interpretation of the notion of valuation, appreciates the integrity of the impugned statement, in particular distinguishes between a fact-based statement and a value judgment in relation to the political expression and sideways covers the question whether or not the contested statement is defamatory, and whether it focuses instead on the disproportionate elements of the undertaken measures for their sanctioning[76].

6.2. The private life of politicians and freedom of expression

While the case law relating to the right to private life of politicians contains a small number of cases, there is large number of cases related to the freedom of expression of journalists and the private life of politicians. Since the time of one of the leading verdicts against politicians calling for the right to privacy, Lingens v. Austria, to today, the limits of acceptable criticism regarding this group of persons have been considerably widened. "Politicians have the right to protect their reputation, even when it is not related to their private life, but requirements regarding this protection must be weight / measured versus interests for open discussion on political issues.[77]" Relevant criteria for balancing between the right to freedom of expression through encouraging public debate and the right to privacy of politician include questions about whether the news led and contributed to public debate; the extent to which the person is publicly known, and the subject of the news.

The concept of private life support personal information for which the politician has legitimate expectations that they will not be published without his consent. For example, there was a violation of the right to privacy of one MP as a video recording of him being drunk at a police station was broadcast without his consent.

72 Oberschlick v. Austria, judgment from 23/05/1991, Application no. 11662/85 § 33
73 Jerusalem v. Austria, judgment from 27/02/2001, Application no. 26958/95 § 43.
74 Lindon, Otchakovsky-Laurens v. France § 59
75 McVicar v. The United Kingdom, judgment from 07/05/2002, Application no. 46311/99
76 Harris, D.J., M. O'Boyle, E. P. Bates, C. M. Buckley (2009) Law of the European Convention on Human Rights, Second edition Oxford University Press p. 509.
77 Lingens v. Austria, judgment from 08/07/1986, Series A No.103.

The head of the police station summoned television crews that filmed the politician even while he was in an abusive situation and behaved inappropriately while being drunk[78].

The focus of these extremely sensitive cases is whether the published news or photography contributed to widespread public debate and which was the public interest. It balances between the right to privacy and freedom of expression as two competing rights. The lack of public interest will turn the balance to the protection of the right to privacy. Thus, in the case Tammer v. Estonia, the Court adjudicated the judgment under which the national courts convicted the journalist who offended the politician's wife during a journalistic interview. The Court accepted the finding of the national courts that the use of certain terms as description of a person's private life was "not justified by the public interest".

The Court distinguishes between news based on gossip and the need to satisfy the civic curiosity and news that relates to for example, the health of political figure important for the society in a particular country. Certainly, the case law is based on the remark that by choosing to enter the "public arena" there is assumption that the politician has accepted to be subject to extensive media coverage through texts and photos. When a politician gives interview about aspects of his private life, then they are part of the public sphere. One of the most important aspects of such interviews is the question of the purpose of those questions, i.e. whether there was good will by the journalist and the time of publication of that interview[79].

7. Freedom of expression and its relation with other rights and freedoms

The Court's case law in Strasbourg confirms that freedom of expression is very often related to the rights and freedoms of the Convention. For example, in the case K. v. Austria, the applicant complained on violation of the right to freedom of expression, but also on violation of the right to fair trial, that is, contrary to this article, the pronouncement of the sentence of detention. As he refused to give specific evidence, which, according to him, would oblige him to witness against himself and according to him, it was inextricably bound with freedom of expression. In deciding on this complaint, at that time the Human Rights Commission took into account the relation between these two rights, but pointed out that there was violation of the right to freedom of expression and that there was no need to consider the objection regarding the right to fair trial separately[80]. Unlike the circumstances of this case, in the appeal of the case Selmani and the Others v. the Republic of Macedonia, the applicants put the focus on the violation in relation to the fair trial for failing to hold a public hearing as through the public hearing could be established facts for the events in the gallery when they were denied the right to report from the Assembly. In addition to the violation of freedom of expression, the Court found that in this case, the right to fair trial was violated.

Correspondence in various forms, as well as telephone communication and similar means of communication are protected by the right to privacy and thus often in the proceedings before this Court, the right to private life is related to the right to freedom of expression[81]. There is a close connection and reference between freedom of expression with freedom of association, freedom of religion, and often with the right to property. However, it is particularly important to distinguish freedom of expression, and speech that spreads hatred, split and division and which must in no way be brought under freedom of expression or under any other right guaranteed by the Convention. In order to obtain representation in which cases the Court places a limit between the right to freedom of expression and hate speech, it is particularly important to understand the Court's approach to Article 17 analyzed in relation to Article 10 of the Convention. Compared to the other provisions of the Convention, the general impression is that the Court rarely applies Article 17 of the Convention. The main purpose of Article 17 is to prevent totalitarian groups from exploiting, in their own interests, the principles set forth in the Convention, while guaranteeing the continuing maintenance of the democratic values system embedded in the Convention.

78 Khmel v. Russia, Application no. 20383/04, judgment from 12/12/2013.
79 Flux v. Moldova, judgment from 24/11/2009, Application no. 25367/05
80 K. v. Austria, judgment from 02/06/1993, Application no. 16002/90
81 McCallum v. The United Kingdom (paragraph 69 of the Report from 04/05/1989 Commission of Human Rights).

In the case Lawless (No. 3) v. Ireland, the Court finds that: "... the purpose of Article 17, if it concerns groups or individuals, is to make it impossible for them to invoke the Convention, to refer to the law, to engage in any activity or to commit an act aimed at violating any of the rights and freedoms set forth in the Convention ... therefore, no one can take advantage of the provisions of the Convention for enforcement of acts with purpose to violate the mentioned rights and freedoms ... "[82].

This approach was partially changed in the cases of Remer v. Germany, and Kuhnen v. Germany[83]. In both decisions on inadmissibility, the prohibition of abuse of Convention rights serves as a leading provision, although decisions are based and reasoned on the restriction of the right to freedom of expression. The Convention concluded that the applicant's publications were contrary to the Convention's ideas and that they reflected racial and religious discrimination. Therefore, the judgment of the Regional Court, confirmed by the Federal Court of Justice of Germany, was "necessary in a democratic society" and in accordance with the grounds for limiting the right to freedom of expression set forth in the Convention. Starting from these views, for David Keane, the notion of "direct or indirect" reference to Article 17 "... reflects the history of the use of this provision. The Commission directly referred to Article 17 in the decision for case Glimmerveen, and indirectly for the case Kuhnen and Remer "[84].

The denial of history and the dark moments of reaching for the freedoms and rights of others cannot be used as form to deny the past. Article 17 stipulates that no provision of the Convention can be interpreted in such way that a State, a group or individual is given the right to take actions or procedures that jeopardize any right or freedom recognized by the Convention, or to limit these rights and freedoms in measures greater than that provided for in the Convention.

7. 1. Freedom of expression and the right to privacy

The Court consistently has emphasized the essential role played by the press in a democratic society. Freedom of expression brings both, "obligations and responsibilities" that apply to the media, even in relation to issues that are important to the public. These obligations and responsibilities gain importance when it comes to attacking the reputation of person and violating "the rights of others"[85]. It should not be forgotten that freedom of expression applies not only to "information" or to "ideas" that are positively received or regarded as inoffensive or as matter of indifference, but also to those who are shocking or disturbed. However, Article 10 also provides exceptions where freedom of expression may be restricted and which must be interpreted strictly, so the need for any restrictions must be clearly established, taking into account whether the interference was "prescribed by law", if there was purpose or purposes that were legitimate and whether the interference was "necessary in a democratic society"[86]. This obligation is extended to the reporting and commenting on court proceedings, if they do not go beyond the boundaries of fair trial and do not become a publicity tool. It is unthinkable that there should be no prior or simultaneous discussion of the trials, whether in professional magazines, in newspapers or among the public[87].

Freedom of expression includes the publication of photographs, cartoons, works of art, including films, novels, and poetry[88]. Regarding visual forms of expression such as photo or video recording, this is nevertheless an area in which the protection of the rights and reputation of others is of particular importance, since photographs can contain personal or even intimate information about a person or his or her family[89].

82 Lawless (No. 3) v. Ireland, Application no. 332/57, judgment from 01/07/1961
83 Otto E.F.A. Remer v. Germany, decision from 19/08/1994, Application no. 25096/94 and Kuhnen v. Germany, decision Application no. 12194/86, judgment from 12/05/1988.
84 Keane David, (2007) Attacking the Hate Speech Under Article 17 of the European Convention on Human Rights, Netherlands Quarterly of Human Rights, Volume 25 No.1 March 2007 pg. 650.
85 Pedersen and Baadsgaard v. Denmark [GS], No. 49017/99, § 71, ECHR 2004-XI.
86 Editions Plon v. France, No. 58148/00, § 42, ECHR 2004-IV; and Lindon, Otchakovsky. Laurens and July v. France [GS], No. 21279/02 and 36448/02, § 45, ECHR 2007-IV.
87 News Verlags GmbH & Co. KG v. Austria, No. 31457/96, § 56, ECHR 2000-I; Dupuis and Others v. France, No.1914/02 § 35, ECHR 2007-VII; and Campos Dâmaso v. Portugal, No. 17107/05, § 31, 24 April 2008.
88 Österreichische Rundfunk v. Austria (decision), No. 57597/00, 25/05/2004, and Verlagsgruppe News GmbH (No.2) v. Austria, Application no. 10520/02, §§ 29 and 40, 14/12/2006.
89 Hachette Filipacchi Associés v. France, Application no.71111/01, § 42, ECHR 2007-VII; and Eerikäinen and Others v. Finland, Application no.3514/02, § 70, 10/02/2009.

Items related to the right to private and family life in connection with published news, photography or commentary require examination of the equitable balance that should be found between the applicants' right to respect for their private lives and the right to freedom of expression of the journalist, the publishing house, photographer, or cartoonist. The so-called balancing test between the right to privacy and freedom of expression is based on very extensive and well-developed case law. Recently, the European Court of Human Rights, within the Grand Chamber, passed the judgments in cases Von Hannover (no.2) and Axel Springer that set out the main principles regarding the balancing test between private and public life of public figures against the freedom and I will pay special attention to these judgments in the text below.[90] But in order to create relation with freedom of expression, in addition to the knowledge of standards related to freedom of expression, the concept of private life developed in the Court's case law in Strasbourg must also be known.

7. 1. 1. The concept of private life

The guarantees of the right to respect for private and family life, as defined in Article 8 of the Convention, are intended to guarantee, without any external obstruction, the development of the personality of each individual in his relations with other human beings. In contacts and relationships with other people, the guarantees of the right to respect for private and family life allow the interaction of a given person with others, even in the public context, which can be brought within the scope of private life. The right to protection of one's reputation is a right that is protected as part of the right to respect for private life.

The essential meaning and purpose of the right to respect for private life is to protect the individual from unjustified interference by state authorities, and in addition, the requirements of this article are not only focused on the State to refrain from such interference, but also to include positive obligations of the state, inherent in the effective respect for private or family life. These obligations may include the adoption of measures designed to protect and respect private life, even in the sphere of relations between individuals[91], taking into account the equilibrium among the relevant competing interests[92]. There are different ways of guaranteeing respect for private life and the nature of the obligation of the state will depend on the particular aspect of the private life in question. In order to include the right to respect for private life, however, an attack on the reputation of person must reach certain level of seriousness in way that threatens the personal enjoyment of the right to respect private life[93].

The concept of "private life" is a broad notion that is not subject to an exhaustive definition, it covers the physical and psychological integrity of a person and therefore can include more aspects such as gender identity and sexual orientation, personal name, photography, or physical and moral Identity. It includes personal information that persons expect not to be published without their consent[94]. In certain circumstances, even when a given person is known to the public, he or she can rely on "legitimate expectation" of protection and respect for his or her private life[95]. For example, posting a photo may affect the private life of a person, even if that person is public person[96]. With regard to photographs, a person's photo reveals the unique characteristics of that person which distinguish him from others. The right to individual's photo protection is thus one of the essential components of personal development. It predominantly presupposes the right of the individual to control the use of that photo, including his right to refuse publication[97].

The judicial practice has repeatedly reiterated that the choice of the means envisaged to guarantee compliance with Article 8 of the Convention in the area of relations between individuals is generally an issue, which falls within the margins of appreciation or free assessment of the States part of the Convention. States have a predetermined margin of appreciation in assessing whether and to what extent an obstruction to freedom of expression protected by this provision is required[98].

90 Von Hannover v. Germany (No. 2), Applications no. 40660/08 and 40641/08, judgment of the Grand Chamber from 07/02/2012 and Axel Springer v. Germany, Application no. 39954/08, judgment of the Grand Chamber from 07/02/2012.

91 X and Y v. The Netherlands, judgment from 26/03/1985, § 23, Series A No. 91.

92 White v. Sweden, Application no. 42435/02, § 20, judgment from 19/09/2006

93 Sidabras and Džiautas v. Lithuania, Application no. 5480/00 and 59330/00, § 49, ECHR 2004-VIII.

94 S. and Marper v. The United Kingdom [GS], No. 30562/04 and 30566/04, § 66, ECHR 2008 Saaristo and Others v. Finland, Application no. 184/06, § 61, judgment from 12/10/2010.

95 Von Hanover v. Germany, cited above, § 51; Standard Verlags GmbH v. Austria (No.2), Application no. 21277/05, § 48, judgment from 04/06/2009; and Hachette Filipacchi Associés (ICI PARIS) v. France, Application no. 12268/03, § 53, judgment from 23/07/2009

96 Schüssel v. Austria (decision), Application no. 42409/98, from 21/02/2002; Von Hanover, cited above, §§ 50 and 53; and Petrina v. Romania, Application no. 78060/01, § 27, judgment from 14/10/2008.

97 Reklos and Davourlis v. Greece, cited above, § 40.

98 Tammer v. Estonia, cited above, § 60.

In cases requiring the right to respect for private life to be balanced against the right to freedom of expression, the Court considers that the outcome of the application should not, in theory be distinguished as to whether the application was brought before the Court under Article 8 of the Convention, by the person who was the subject of the article, or by Article 10 by the issuer, since in principle these rights deserve equal relation[99].

7. 1. 2. The test of balancing between private life and freedom of expression

The Court established the criteria for balancing freedom of expression with regards to the right to respect for private life in the cases Von Hanover and Axel Springer and in the case law following them. In doing so, as relevant to the balancing test, the Court pointed out the following questions:

- Whether the published information contributes to debate of general interest,
- How much the person is publicly known and what is the subject of information,
- The previous behavior of the person concerned,
- The circumstances to which the statement refers, the information or circumstances in which the photographs or footage are made, and
- Content, form, and consequences of publication.

1. The first and essential criteria is whether there is contribution to the information in the form of statement, photos or articles in the press for debate of general and public interest[100]. What is a matter of general interest will depend on the circumstances of the case. The court accepts the existence of such interest when not only the publication refers to political issues or atrocities, but also when it concerns sporting issues or performances related to culture or art. In the case Nikowitz and Verlagsgruppe News GmbH v. Austria, the Court took into account that the satirical title in a newspaper for sports stars had an impact on a public debate of general interest concerning the relationship of society to this type of celebrity[101]. Jurisprudence did not accept that the information about the marital difficulties of a given president of the state or the financial difficulties of a celebrity singer would be issues of general interest. Thus, for example, in the case Sapan v. Turkey, for the book which was mainly the publication of a doctorate on the subject of the phenomenon of celebrities from the world of music and film in Turkey, and which used the famous singer Tarkan as an example of this type of public figure, the Court pointed out that it cannot be considered as a tabloid[102].

2. The recognition of the role or function of a person, as well as the nature of the activities that have been the subject of the notice or the photograph (s), constitute important criterion relating to the question whether the publication was of general interest. In doing so, a distinction must be made between private individuals and persons known to the public, such as political or public figures. A private individual who is unknown to the public may seek certain protection of his or her right to private life, but the same does not apply to public figures. In addition, there is fundamental difference between facts that can contribute to a debate in a democratic society, and reporting details of the private life of individual who does not perform such functions. Although in the first case the press performs its role as "public watchdog" by transmitting information and ideas on matters of public interest, that role becomes less important in cases involving private persons. Similarly, although in certain specific circumstances, the right of the public to be informed may even be extended to aspects of the private life of public figures, especially when politicians are concerned, this will not be the case when published photos and accompanying comments are exclusively addressing the details of the private life of a person and have the sole purpose of meeting public curiosity in this respect. In the latter case, freedom of expression requires interpretation that is more limited. In this respect, the Court has extended the notion of "public figure or public person" and thus extended the limits of acceptable criticism in such cases. In the case Colaço Mestre and SIC – Sociedade Independente de Comunicação S.A.v Portugal, it was found that the president of the Portuguese football club was a well-known public figure in the Portuguese society and thus he was

99 Timciuc v. Romania, decision No.28999/03, § 144, from 12/10/2010; and Mosley v. The United Kingdom, No.48009/08, § 111, from 10/05/2011.

100 Leempoel& S.A. ED. Ciné Revue, cited above § 68.

101 Egeland and Hanseid v. Norway, Application no. 34438/04, § 58, judgment from 16/04/2009; Nikowitz and Verlagsgruppe News GmbH v. Austria, Application no. 5266/03, § 25, judgment from 22/02/2007.

102 Standard Verlags GmbH, cited above, § 52, and Hachette Filipacchi Associés (ICI PARIS), cited above, § 43.Sapan v. Turkey, Application no. 44102/04, § 34, judgment from 08/06/2010

not beyond the margin of wide criticism despite the fact that he was neither a politician neither held a high public office[103].

3. Behavior of the person concerned prior to the publication of the notice or the fact that the photograph and the related information have already appeared in previous period, are also factors to be considered. Thus, in the case MGN Limited v. The United Kingdom, the newspaper was fined for publishing details of a drug addiction treatment of a well-known photo-model. The Court held that having regarded her previous conduct, her denial that she had used drugs, the facts of her dependence and the fact that she received treatments, could be regarded as a matter of public interest, but that the freedom of expression of the newspaper was not violated because the publication of the intimate details about the health of the photo-model in a way that was easy to identify her were not necessary[104].Also, the very fact of co-operation with the press in previous events could not serve as argument for depriving the affected party of all protection regarding the publication of photograph.

4. The manner in which the photograph or notice is published and the manner in which the person concerned is represented in the photograph or notice may be factors that should be taken into account[105]. The extent to which a notice and photography or footage are spread may be important, depending on whether the newspaper is national or local. Therefore, in the case Alkaya v. Turkey, the news of the burglary in the home of a famous actor was indeed a matter of public interest[106]. However, the Strasbourg Court found violation of the right to private life because the newspaper published the exact address of the actor without her consent, which was intended to satisfy the curiosity of certain readers on details for her private life. In the case Hachette Filipacchi Associés (ICI Paris) v. France, the Court began analyzing a journalist's news about a famous French singer Johnny Holliday and his financial problems and found that the news itself did not contribute to the launch of a debate of public interest. As regards to the photographs accompanying the story, the Court finds that they were by their nature commercial, but not intended to be abused in the context of the published news. Since the singer, himself had disclosed the details of his financial situation before publishing the news and, given being recognized as a public figure, there could have been no reasonable expectations that his private life would be effectively protected[107].

5. The principles of the circumstances in which the photographs or footage were made cannot be overlooked and they are summarized in the judgment for the case Von Hanover v. Germany (No. 2) which repeats the already established position in the earlier case law that freedom of expression also applies to posting photos. This is due to the fact that photography may contain very personal or even "intimate" information about a particular person or for his or her family. Hence, the recognition of the right to image was created through photography as part of the right to private life. It should be taken into account whether the recorded or photographed person has given consent to taking the photographs and their publication or whether this was done without his knowledge or fraud or other illicit means, as well as the consequences of publishing the information or the recording / photographs of the person concerned. For a private individual, unknown to the public, the publication of a photograph may lead to significant interference[108].

In one case, from recent date from the case law, a journalist decided to "reinforce" his text on environmental pollution with retouched photos of a company director mentioned in the text, with a glass in his hand. The court found violation of the freedom of expression, as there was a public interest and debate of general interest, there was no bad intention by the journalist and there was a sufficient factual basis[109].

Judicial practice regarding freedom of expression leaves journalists with some freedom in publishing photographs without legal obligation to notify for their publication if they are not offensive, are not subject to criticism or anything that

103 Colaço Mestre and SIC – Sociedade Independente de Comunicação S.A.v. Portugal, Application no. 11182/03, § 27, judgment from 26/04/2007

104 MGN Limited v. The United Kingdom, Application no. 30401/04, judgment from 18/01/2011 Flinkkilä and Others v. Finland, Application no. 25576/04, § 81, judgment from 06/04/ 2010.

105 Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft Mbh. v. Austria (No. 3), following Application no. 66298/01 and 15653/02, § 47, judgment from 13/12; Jokitaipale and Others v. Finland, Application no. 43349/05, § 68, judgment from 06/047/2010.

106 Alkaya v. Turkey, Application no. 34438/04, § 58, judgment from 16/04/2009

107 Hachette Filipacchi Associés (ICI Paris) v. France, Application no. 12268/03, § 58, judgment from 23/07/2009.

108 Eerikäinen and Others v. Finland, cited above, § 70.

109 Tănăsoaica v. Romania, Application no. 3490/03, § 46, judgment from 19/06/2012

could violate the reputation of the person on it. On the other hand, posting photos of public figures may lead to a violation of the right to privacy, so the manner in which the photo was achieved is important. The consent of the person to whom the photo relates is important, and even, his refusal to publish certain photos if they are made secretly, which is often the case with photos made by paparazzi. Thus, in the case of Hachette Filipacchi Associés (ICI PARIS) v. France, the Court found that the judgment of the national courts in relation to the newspaper Paris Mach did not violate freedom of expression, since the published photos represented the dead body of a well-known politician in an unsuitable manner and they were published without the consent of the family[110].

6. The strictness of the pronounced sanction and its nature are also factors that should be taken into account when assessing the proportionality of interfering with freedom of expression.

7.1.3. The Von Hanover case and the right to privacy

In the case Von Hanover v. Germany (No. 2)[111], the Princess of Monaco, Caroline von Hanover and Prince Ernst August von Hanover argued that the refusal by the German courts to ban any further publication of photos with them, violated the right of respect for private life.

Since the early, 1990's von Hannover has often tried through the Courts to prevent the publication of photos of her private life in the press in Germany. Two series of photographs published in 1993 and 1997 in three German magazines showing parts of her private life, were subject to three batches of proceedings in the German courts and later these proceedings were the subject of judgment of the Court in Strasbourg, where the Court assessed that the court decisions violated the right to respect for her private life[112].

Relying on the Court's judgment in the first case, the applicants initiated several series of proceedings in civil courts seeking ban on any further publication of photographs appearing in German journals. Regarding the three photographs published in the Frau im Spiegel and Frau im Actuel journals after the proceedings before the national courts in Germany, the applicants turned to the Strasbourg Court. The Court noted that, in accordance with their case law, the national courts had carefully balanced the right of the publishing companies to freedom of expression in respect of the applicants' right to respect for their private lives. In doing so, the national courts have devoted fundamental importance to the question of whether the photographs were considered in the context of the accompanying articles, contributed to a debate of general interest and examined the circumstances in which the photographs were taken, taking into account the case law of Strasbourg. Bearing in mind the margin of appreciation in balancing the right to privacy and freedom of expression as two competing interests, the Court concluded that the national courts had complied with the positive obligations regarding the right to private life and there was no violation of that provision.

Following the judgment for case Von Hanover v. Germany in 2004, the interpretation of individuals under the notion of "public figure" was considerably expanded. Namely, under this group were prioritized politicians and public servants. In its previous case law, the Court distinguished between "politicians" "public figures" and "private persons". The concept of "public figures" was expanded by including business magnates, chairperson of football club, and director of a local company[113]. In the leading judgment for the case Von Hanover v. Germany (no.2), the Court noted that regardless of whether and to what extent the Princess of Monaco had an official function in relation to the Monaco Principle, she and her husband were public figures and could not be subjected to the group "private individuals" for whom the margin of protection of private life is far wider. Regarding public figures, the closer the margin of protection to private life is, the wider the scope of the permitted criticism.

110 Hachette Filipacchi Associés (ICI PARIS)v. France, Application no. 71111/01, ECHR 2007-VII.
111 Von Hannover v. Germany (No. 2), cited above.
112 Von Hannover v. Germany, judgment from 24/06/2004, Application no. 59320/00, ECHR 2004-VI.
113 Verlagsgruppe News GmbH (no.2) v. Austria, Application no. 10520/02,judgment from 14/12/2006, Tănăsoaica v. Romania, cited above.

The public has the right to be informed about the private life of public figures as long as the published news is related to the public interest. In addition, not every aspect of the private life of public figures is related to the public interest[114]. Thus, in the case Karhuvaara and Iltalehti v. Finland, the Court found that the verdict for the politician's wife could have influenced the voters' intention of voting and to some extent; this news was of public interest[115]. In the case Kuchl v. Austria, the Court accepted that the question whether the church dignitaries live in accordance with the standards proclaimed by the church, is a matter of public interest[116].

The main issue in cases involving public figures, as in the case Von Hanover, is whether the aspects of the private life of the public figure in question, have sufficient elements to propel the public interest. Thus, in the case Standard Verlags GmbH v. Austria, the Court held that the published news of the affair of the Austrian President's wife with another politician constituted only gossip, aimed at satisfying the curiosity of particular audience and in no way contained elements of public interest[117].

In the case Von Hanover and the case Axel Springer v. Germany, specific criteria has been established concerning the use of photographs and the issue of public interest, such as:

- Whether the photos have already been published,
- How are they published and how the person concerned is presented,
- The extent to which they are published,
- The circumstances in which the photographs were made,
- Consent to make photographs, or other way around, there is a lack of consent,
- How and what are the consequences for the person.

In journalistic articles in which there is, a public interest for debate there is no automatic authorization of the journalist to publish any personal and intimate photos.

Compared with the consequences of published written text, the consequences of published photos are significantly more visible.

7. 1. 4. The case of Axel Springer and freedom of expression

This case was considered by the Court at the same time as the Von Hannover case in order to make a difference in the application of the principle of balancing freedom of expression when it is in relation to the right to privacy. Namely, Von Hannover starts from the right to privacy of public figure, while the starting point in Axel Springer's analysis is the freedom of journalistic expression.

In the case of Axel Springer, the applicant is a joint stock company that publishes Bild, a daily newspaper with large circulation. Referring to the right to freedom of expression, the applicant complained before the European Court of Human Rights in connection with a ban imposed in respect of a news item published by the newspaper in two articles related to a famous TV actor X, who was arrested at the Oktoberfest in Munich for possession of cocaine. A journalist employed by the applicant, stated that the police present at the scene, confirmed that he was arrested without giving any further details. The journalist then contacted the public prosecutor W from the public prosecutor's office of Munich Regional Court I, which confirmed that X was arrested for possession of cocaine. According to W, plain-clothes police officers had arrested X and after searching, found an envelope containing 0.23 grams of cocaine, which led to an investigation.

The first article relates only the arrest of X and the information received from W, and the expert's legal analysis of the severity of the committed offense. The second article only informed on the Court's sentence at the end of the hearing and

114 Mosley v. The United Kingdom, Application no. 48009/08,judgment from 10/05/2011.
Axel Springer v. Germany, cited above.
115 Karhuvaara and Iltalehti v. Finland, Application no. 53678 / 00 § 48.
116 Kuchl v. Austria, Application no. 51151/06, 04/12/2012.
117 Standard Verlags GmbHv. Austria (no.2), Application no. 21277/05,judgment from 04/06/2009.

after X's confession. The articles did not unveil details about X's private life, but mainly related the circumstances and events after his arrest. Based on this information, Bild published two articles that were used by other newspapers and magazines. In the proceedings before the national courts, the publisher was banned to publish the content of the articles in question, and was ordered to reimburse X on court costs. The German courts did not introduce a complete ban on all announcements of the arrest and trial of X and according to the Government, the problem was that the publisher failed to maintain the anonymity of the actor during his arrest and before the trial.

Axel Springer complained before the Strasbourg Court on violation of freedom of expression in relation to the imposed ban on reporting on X's arrest and indictment. The court pointed out that the public, in principle, has interest in being informed about criminal proceedings, as long as the presumption of innocence is strictly respected[118]. In this case, X was sufficiently known to qualify as public figure, which increased the public's interest in being informed on the arrest and criminal proceedings against him. In addition, he himself revealed details about his private life. The published information and especially the identity of X derived from information from the police and prosecutor W who, in addition, at that time was a public relations officer at the Munich Public Prosecutor's Office. The Court held that, having regarded to the nature of the offense committed by X, the extent to which he was known to the public, the circumstances of his arrest and the reliability of the information in question, of Axel Springer, having received confirmation of that information from the law enforcement authorities itself, there was not enough solid basis to believe that he should keep X's anonymity. The prosecutor W confirmed all information for other magazines and for television channels, published by the journalist. Therefore, for the Court, the form of the articles in question did not constitute grounds for banning their publication.

The judgment in the case of Axel Springer set out the relevant criteria in seeking a balance between the right to privacy and freedom of expression: the contribution of the news to public debate, how much the person to whom the news or photography refers to is well known in public, his previous conduct, the consequences of the publication and the methods by which the information is provided.

The Court noted that the rigorous sanctions imposed on the publisher could have serious effect on its operation and were not justified. Despite the margin of appreciation, the Court concluded that there was no reasonable relationship of proportionality in the restrictions imposed by national courts with regard to the right to freedom of expression of the publisher. Therefore, in the present case, the Court found violation of freedom of expression, taking into account that there was a public interest debate as the disputed journalistic text reported on public court facts related to a public figure whose expectations for the protection of private life were limited, in the absence of a bad intention by the newspaper.

7. 1. 5. Macedonian experiences regarding the right to privacy and freedom of expression

In the case Popovski v. The Former Yugoslav Republic of Macedonia, the applicant argued that the length of the impugned proceedings was excessive and that the Republic of Macedonia, having regard to the ineffectiveness of the criminal proceedings for defamation, failed to protect his right to respect for private and family life. Namely, according to published article in the daily newspaper "Utrinski vesnik" under the title "The uncle was stealing, Jovan was standing guard", in which the applicant was given by his name and surname, he sent a letter to the newspaper the next day, in which he asked for correction given the false allegations in the article. He stated that in the absence of correction, he would have been perceived as a criminal in the city where he lived. The newspaper did not publish anything in this regard, and after several oral requests, the applicant sent a letter to the newspaper requesting information about the identity of the journalist whose initials appeared at the end of the article. He also filed private criminal charges for defamation in accordance with the Law on Criminal Procedure against the editor-in-chief of the newspaper and against the responsible journalist. The applicant alleged that the article was detrimental to his reputation and the reputation of his family and claimed compensation for non-pecuniary damage, the amount of which should have been specified at the main hearing.

118 News Verlags GmbH & Co. KG KG v. Austria, cited above § 56; See also Recommendation (2003) 12 of the Committee of Ministers, in particular principles No. 1 and 2.

The court noted that the proceedings had been pending for more than four years before the trial court and that it had ended as a consequence of the absolute limitation period. During that time, the trial court scheduled twenty-three hearings that were rescheduled given the absence of the defendant or the representative. During the proceedings, the applicant addressed the trial judge and the president of the judicial council on two occasions, appealing on the manner in which the trial was conducted and warning that the indictment could become obsolete.

The applicant complained before the Strasbourg Court, that the Republic of Macedonia, as a result of the failure of the domestic courts to ensure the presence of the defendant, failed to protect the right to respect for private and family life, including his reputation. He stated that as a consequence of the published article, in public was created negative image of him and his family. His home and workplaces were covered with graffiti describing him and his family as "robbers".

In the case Popovski, the Court finds that the domestic courts did not determine the merits of the applicant's allegations that the article published in the newspaper violated his rights under Article 8. The criminal procedure was interrupted due to the absolute limitation period. The domestic courts, due to errors that can only be attributed to them; have failed to confirm the authenticity of the statements contained in the article. The Government in the proceedings before the Court acknowledged that the criminal proceedings had been ineffective in the applicant's case, and was therefore, prevented from enjoying the effective protection of his right to respect for private life. Without concluding anything in relation to the outcome of the proceedings, the Court held that the manner in which the criminal justice mechanism was implemented in this case, was flawed to the extent that it constituted a violation of the positive obligations of the Republic of Macedonia under Article 8 of the Convention and that there has been violation of Article 8 and violation of Article 6 of the Convention due to the unreasonable length of the proceedings.

7. 2. Privacy, the Internet and Freedom of Expression

The widespread use of the Internet has completely changed the image of previous forms of communication, altering the classical form of transmission, sharing, and dissemination of information among people around the world. The Internet has transformed freedom of expression into an open platform where anyone with the right technical support, regardless of his profession, knowledge of language, the matter that he writes and without special editing or proofreading of the text, can engage in certain debate with his entire integrity and identity, or anonymously, under a pseudonym. Communication on the Internet is free from editorial policy on the relevance and importance of the message, but according to Eric Barendt there is no "legal advice for the blogger or the operator that his remarks are offensive, violating privacy or are contrary to other legal provisions.[119]" Barendt warns that the Internet is a platform from which one can easily destroy someone's reputation or privacy, and according to him, the Internet should not be a zone in which will rule lawlessness. Stephen Tully, on the other hand, raises the question of whether Internet law in the 21st century can rise to the ranks of human rights, bearing in mind that the Internet is important for the needs of politics, the economy, and the social and cultural needs in modern life. Therefore, this right "must be in balance with other rights and interests, including privacy, the protection of intellectual property and the provision of public order. Limits and access restrictions are allowed and disconnecting is possible for specific users if certain procedural safeguards are provided.[120]"

The Strasbourg Court did not remain immune to these debates, which slowly but surely raise questions about the jurisdiction of the Court, on privacy and freedom of expression. The jurisdiction of the Court relates to the sovereignty of the States and, for those reasons, it is generally geographically determined. Cases with the Internet raises questions that go beyond the boundaries of territorial jurisdiction in situations where the applicant is located in a country where there was no complaint procedure for violation made on the Internet. The Court's assessment is that it is a matter of applying the principles of private international law, and the answer should first be given by the competent national courts[121].

119 Barendt, Eric (2013) Defamation and the Net: Anonymity, Meaning and ISPs, Free speech in an Internet era: papers from the Free Speech Discussion Forum / edited by Clive Walker, Russell L. Weaver. - Durham, North Carolina: Carolina Academic Press, 2013. p. 107-120.

120 Tully, Stephen (2014) A human right to access the Internet? Problems and prospects; Publisher Human Rights Law Review, vol. 14, no. 2 (2014), p. 175-195.

121 Premininy v. Russia, Application no. 44973/04, judgment from 10/02/2011.

In the case Premininy v. Russia, Nikolay Preminin and his father Anatoliy Preminin appealed to the Strasbourg Court for inhuman and degrading treatment and violation of the right to freedom and security because Nikolay Preminin was beaten by prisoners and prison guards while he was detained on suspicion of having hacked the US bank's security system, "Green Point Bank" in 2001 and stolen their database clients. This case was accepted by the Russian courts, which found that they were competent to decide on this case. The Court accepted to rule on the complaints of these persons, without questioning the jurisdiction in this case.

In many cases, the Court has accepted that it will be competent for the specific case related to Internet if it is found that the possible violation of the Convention may be attributed to one of the Member States of the Convention or that it has been committed within the jurisdiction of a Member State of the Convention. Otherwise, the criteria for rejecting the application as ratione personae or ratione loci will be applied in accordance with the Court's practice[122]. However, today, the number of Internet-related cases to which the Court has had the opportunity to elaborate the issue of jurisdiction in all its disputable aspects, is small.

In the decision on Perrin v. the United Kingdom appeal, the Court dismissed the applicant's appeal and found that, as resident of the United Kingdom, the applicant could not dispute the applicability of the laws and jurisdiction of the Courts in his case. Namely, he was charged and convicted of publishing obscene text on the Internet. The applicant was a French national who lived in the United Kingdom and the website on which the text was published, was managed, and controlled by a company located in the United States.

7. 2. 1. Privacy and the Internet

Although the purpose of Article 8 of the Convention is to protect the individual from interference by public authorities, apart from this primarily negative obligation, there are positive obligations inherent in the effective respect for private and family life[123]. These obligations may include the adoption of measures aimed at ensuring the respect for private and family life, even in the field of relations between individuals[124]. Positive obligations for the state should also ensure effective respect for the private life of persons, especially the right to respect for reputation[125]. In this regard, the attack on personal honor and reputation must reach some degree of seriousness and it must be committed in a manner that causes damage to the personal enjoyment of the right to respect for private and family life[126]. Private life includes privacy in communicating by mail, phone, email and other forms of communication such as privacy in Internet access. Privacy includes photos and video clips, as well as voice recordings[127]. In that sense, the choice of means deemed to ensure compliance with the right to private life in the sphere of relations between individuals is in principle, an issue that falls under the principle of the margin of appreciation of the state's members of the Convention, which nevertheless goes hand in hand with European supervision[128]. The Court considers that the minimum requirement for a legal system to be effective is that it is established and acts to protect the rights that are covered by the term "private life".

In the judgment for the case Copland v. The United Kingdom, the Court discussed the issue of the right to privacy by e-mail, the Internet, and telephone calls[129]. The applicant, Lynette Copland, at the time of the events related to her case was employed by the state-run Carmarthenshire College. In 1995, she became the College Secretary's personal secretary, and from the end of 1995, she was asked to co-operate with the newly appointed Deputy Director. Mrs. Copland complained that during her work, her phone, e-mail, and Internet usage were monitored by the Deputy Director and that it had affected her private life. The Court assessed that

122 Ben El Mahi v. Denmark, decision Application no. 5853/06, ECHR 2006 XV.

123 Airey v. Ireland, judgment from 09/10/1979, § 32, Series A No. 32; X and Y v. The Netherlands, cited above, §§ 23-24 and 27; August v. The United Kingdom, decision Application no. 36505/02 adopted on 21 January 2003; M.C. v. Bulgaria, Application no. 9272/98, § 150, ECHR 2003-XII); and K.U. v. Finland, Application no. 2872/02, § 43, adopted on 02/12/2008.

124 White v. Sweden, Application no. 42435/02, § 20, judgment from19/09/2006.

125 Petrina v. Romania, cited above, §§ 34 and 35; Petrenco v. Moldova, Application no. 20928/05, § 52, judgment from 30/03/2010; and Alexey Petrov v. Bulgaria, Application no. 27103/04, decision from 02/11/2010.

126 A. v. Norway, Application no. 28070/06, § 64, judgment from09/04/2009, Mikolajová v. Slovakia, Application no. 4479/03, § 55, judgment from 18/01/2011 and Roberts and Roberts v. The United Kingdom, Application no. 38681/08, §§ 40-41, decision from 05/07/2011.

127 Sciacca v. Italy, Application no. 50774/99, § 29, ECHR 2005-I, and P.G. and J.H. v. The United Kingdom, No.44787/98, §§ 59-60, ECHR 2001 IX.

128 Mosley v. The United Kingdom, cited above, § 107.

129 Copland v. The United Kingdom, Application no. 62617/00, judgment from 03/04/2007.

the collection and storage of personal information for Mrs. Copland by monitoring her use of the phone, e-mail and the Internet affected her private life and correspondence, and that those proceedings were not "in accordance with the law", because at that time there was no Law regarding the monitoring of this type of correspondence. Although the Court accepted that it may sometimes be legitimate for the employer to monitor and control the use of telephone and employee information, in the present case it was not proven that it was "necessary in a democratic society". For these reasons, the Court finds that there has been violation of the right to privacy and that it is not necessary to examine the case with regard to the effectiveness of the remedy.

In the case K.U. v. Finland, the Court finds that the Finnish authorities did not protect the right to private life of a juvenile whose personal data had been abused on the Internet[130]. This case is associated with the applicant at a time when he was 12 years old and refers to advertisement with sexual content placed on the Internet by an unknown person. The advertisement mentions his age, year of birth and gives detailed description of his physical appearance. A link was also posted to the applicant's website where his photograph and telephone number could be found. The boy became aware of this announcement when he received email from a man who offered to meet him. His father asked the police to identify the person who posted the information on the Internet in order to bring charges against him. The internet provider refused this request, considering it was bound by the confidentiality of telecommunications as it was actually prescribed by the then Finnish law. According to Finland's laws from that time, the police and the courts could not require the Internet operator to disclose the identity of the person who posted the information with the announcement.

Recalling on the right to respect for private and family life and the right to effective legal protection, the applicant complained to the Court in Strasbourg of the intrusion into his private life and that there was no legal protection for him in Finland. Although the case in the national courts was examined in the light of defamation, the Court in Strasbourg analyzed the complaint from the aspect of the right to private life, bearing in mind the threat to the physical and mental health of boy who was at particularly sensitive stage of his life. For the Court, the placement of advertisement with sexual content for a juvenile, which at that time was 12 years old, constitutes a criminal act, which resulted at being the target of pedophiles and such acts required effective investigation and prosecution of the person who provided this information. The Court emphasized the need for enhanced protection of children and other vulnerable individuals from such forms of gross intrusion in their private life. Although legal protection was subsequently introduced in the Finnish legal system, it was not in force at the time, and Finland did not protect the right to private life of this person, since the confidentiality of the information about the one who appointed it, received primacy in relation to its physical and moral integrity.

7. 2. 2. The Internet and freedom of expression

The restriction of freedom of expression must be interpreted very strictly and the states members of the Convention must prove that it was "necessary in a democratic society" to result from "immediate social need" proportionate to the legitimate aim referred to in the second paragraph of Article 10 Of the Convention and always, form of court decision that will contain relevant and satisfactory explanation. With regards to Internet publications, having regards to the general principles relating to freedom of expression, the Court pointed out that "In the light of accessibility and capacity to collect and disseminate large amount of information, the Internet plays important role in improving access to information and facilitating the dissemination of information in general. Maintaining archives on the Internet is critical aspect of this role, and the Court considers such archives deeming to be within the scope of the protection provided for in Article 10. [131]"

The judgment in the case Editorial Board of Pravoye Delo and Shtekel v. Ukraine[132] was the first judgment in which the Court pointed out that the state had positive obligation to create appropriate legal framework that would ensure effective protection of journalistic freedom on the Internet. In the mentioned case, the applicants were fined for re-publishing already published text on the Internet by an anonymous author who was considered being defamatory. The text was accompanied by brief notes pointing out the source of the information and distancing from the text. The publishers were asked to publish denial and apology even though they were not provided for in the national legislation. For the press that is well represented

130 K.U. v. Finland, Application no. 2872/02,judgment from 02/12/2008.

131 Times Newspapers Ltd. v. The United Kingdom, Applications no. 1 and 2, No.3002/03 and 23676/03, § 27, judgment from10/03/2009.

132 Editorial Board of Pravoye Delo and Shtekel v. Ukraine, Application no. 33014/05, judgment from 05/05/2011

on the Internet, the freedom to transmit and get information and the guarantees in that direction is of particular importance. It has the duty to provide information and ideas on matters of public interest[133]. The Court finds that in the present case there was no law in Ukraine permitting restriction on the re-publication of content already posted on the Internet, that the procedure of the national courts was not "foreseen by law" and that they did not even consider the provisions of the law dealing with print media.

In order to justify the verdict that someone has committed defamation over the Internet, the domestic courts must provide relevant and satisfactory reasons, which the Court may accept. In the case Perrin v. The United Kingdom, the Court pointed out that "having in regards the fact that the applicant who participated in the publication of an obscene website, by the company to which he was the largest shareholder, earned financially by publishing obsolene photos on his reviewed page, it was reasonable, on the side of the national authorities, to take into account that purely a fine would not constitute sufficient sentence or intimidate it him.[134] "

The increasing influence of the Internet led the Court to build specific balance between the protection of freedom of expression and respect for other rights. For example, the rights of minors must be always and in all situations protected, bearing in mind their mental and physical vulnerability, especially if one takes into account the ease with which they themselves come free for information on the Internet or become the target of pedophiles on the Internet. Regarding the danger of child pornography on the Internet, countries must provide a strong legal framework for protection[135]. At the same time, whenever the subject of news published by a journalist is a minor, he must take account of this fact and the consequences for the moral, psychological development and the private life of the juvenile. In the case Aleksey Ovchinnikov v. Russia, the journalist was responsible for defamation in civil action against him because of the news he published about A child who was subjected to sexual abuse by other children during a summer camp stay. The news contained the identity of the parents of the offenders.

The ban on uploading posters on the highway containing the website address of associations whose members were accused of sexual activities with minors and promoting "geniocracy", offering cloning services and announcing the birth of cloned children was assessed as proportionate and necessary for the protection of health, morals and crime prevention in the case Mouvement raëlien Suisse v. Switzerland.

The impact of the information is multiplied when they are posted on the Internet or when they are displayed in a public place with reference to a particular website. These elements reinforce the interest in taking measures that would limit the possible distribution of certain information that meets the requirements for the application of paragraph 2 of Article 10. However, the restrictions must be proportionate to the aim pursued[136]. The Convention does not require the media to provide in advance warning to individuals that they plan to publish certain information about them. In the Mosley v. United Kingdom judgment, the newspaper published on its website details, images, and video about sexual activities of a public figure. In a two-day period, more than one million visitors to the website viewed the video. The applicant was not able to prevent its publication, besides the influence on his private life and the fact that he received financial compensation[137].

Undoubtedly, with regards to information on the Internet, the state must guarantee protection regarding the reputation of persons, confidential information, or information of private nature that each individual can expect to be released without his or her consent.

133 Observer and Guardian v. The United Kingdom, Application no. 13585/88,judgment from 26/11/1991, Series A No. 216.
134 Perrin v. The United Kingdom (decision), cited above.
135 K.U. v. Finland, cited above, §§ 41-50.
136 Mouvement Raëlien Suisse v. Switzerland, Application no. 16354/06, judgment of the Grand Chamber from13/07/2012.
137 Mosley v. The United Kingdom, cited above.

7. 2. 3. The Internet and the strengthening of journalistic responsibility

It is the duty of the journalists to take care of the correct application of the principle of responsible journalism by checking the accuracy of the published information, especially if it is information about facts or events that have passed and in relation to which there is no urgency. Judicial practice speaks of "the goodwill of the journalist, ethics and secure information". The court has repeatedly stated that freedom of expression ends where the intention is simply to satisfy the curiosity of certain readers at the expense of the right to respect private and family life. The seal must not release details of the private and family life of persons who, although on the Internet, do not pursue public or political debates on matters of public interest. A public person must not be exposed to the public judgment regarding details of the private life of family members even when those data are available on the Internet[138].

Moreover, the freedom of expression on the Internet does not accept and does not allow racial discrimination and hatred, regardless of the form of media that operates. For example, in the case Féret v. Belgium, a political leader and website owner was convicted of xenophobic remarks regarding immigrants and the Court assessed that there was "necessary social need" to protect the rights of the emigrant community[139]. Discrimination through political message is even more dangerous when it is widespread through announcement on the Internet[140].

The case of Delfi AS v. Estonia, raised a question whether the portal that places the information on the Internet has responsibility in respect of offensive comments that are on border to hate speech[141]. The portal complained to the Strasbourg Court that the responsibility for the readers' comments raises its freedom of expression. The Court emphasized that the establishment of liability of the portal by the Estonian courts was justified and proportional, especially since: the comments were deeply offensive; the portal failed to prevent their publication, benefited from their posting, and allowed the authors to remain anonymous and the € 320-euro fine determined by the Estonian courts, was not excessive.

Another dimension related to the Internet and freedom of expression is the intellectual property rights that were raised in the Yildirim and Akdeniz cases, both against Turkey[142]. Namely, in the case Yildirim v. Turkey, the prohibition on the Internet provider had effect on access to the applicant's website. The court accepted that this was not a ban, but a restrictive approach to the Internet, pointing out that the Internet today is one of the main forms of practice of freedom of expression and that the applied measure has reached the applicant's right to freedom of expression.

138 Aleksey Ovchinnikov v. Russia, cited above, §§ 50-52 and Times Newspapers Ltd. v. The United Kingdom (No. 1 and 2), cited above, § 47.
139 Féret v. Belgium, Application no. 15615/07, § 80, judgment from 16/07/2009.
140 Willem v. France, cited above, §§ 36-38.
141 Delfi AS v. Estonia, complaint No.64569/09, Judgment of the Grand Chamber from 16/06/2015.
142 Yildirim v. Turkey, Application no. 3111/10; and Akdeniz v. Turkey, Application no. 20877/10.

7. 3. Hate speech and freedom of expression[143]

Although there is no widely accepted definition of hate speech, the Court's practice applies the Recommendation of the Committee of Ministers of the Council of Europe on "hate speech"[144]. This recommendation establishes that, under hate speech, are all forms of expression that spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred, based on intolerance, including intolerance expressed through aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, migrants and people of immigrant origin.

However, although it uses this recommendation, the Court has the determination not to be bound by the precise definition or classifications established by the national courts, but rather from the specific circumstances of the case, the context of the particular statement and the consequences. In this way, the Court prefers the "autonomous concept" and does not restrict its activities in future cases. Therefore, until now the Court of Strasbourg has identified numerous forms of expression that are contrary to the Convention (xenophobia, racism, anti-Semitism, aggressive nationalism, discrimination against minorities and immigrants ...). There is no doubt that specific expressions that may be offensive to certain individuals or groups that are not specifically protected by the right to freedom of expression may be considered as hate speech. The Court emphasized many times that if the context of a statement or a comment is related to a conflict, if it is of tense nature or refers to a particularly vulnerable group of persons, the media should be particularly sensitive and cautious when transmitting information and commenting. In such situations, not only journalists, but also politicians, the persons who influence the formation of public opinion bear special responsibilities and duties, because they can precisely become a "means of spreading hate speech and violence.[145]" Here undoubtedly is included homophobic speech, which can be brought under the category of hate speech[146].

Through the Court's case law, the Court has developed two approaches to "hate speech": by applying Article 17, (prohibition of abuse of rights and freedoms set forth in the Convention) or by applying, the restrictions laid down in Article 10 § 2 of the Convention.

7. 3. 1. Prohibition against abuse of freedoms and rights

The application of a ban on the abuse of freedoms and rights set forth in the Convention rests on the view that there is no room for freedom of ideas that spread imprisonment and non-abortion ideas. It aims to prevent totalitarian groups from abusing the principles set forth in the Convention and to guarantee continually maintaining a system of democratic values embedded within the Convention. Article 17 of the Convention obliges tolerance and respect for the rights and freedoms of others in society and is used as the main ground in Holocaust denial and issues related to historical facts[147]. The aim is to prevent totalitarian groups from exploiting them in their interests and purposes, to the principles set forth in the Convention, and to ensure the continuing maintenance of the democratic values system embedded in the Convention[148].

In the decision on inadmissibility in the case Glimmerveen and Hagenbeek v. The Netherlands, referring to the judgment for Handyside v. The United Kingdom, the Commission pointed out the duties and responsibilities arising from the right to freedom of expression and underlined that "Article 17 does not permit the use of Article 10 to spread ideas that are racially

143 See statement, first published with respect to the Practice of the European Court of Human Rights on Hate Speech cases at Kambovski V. and Lazarova Trajkovska M, (2012) Legal analysis of the concept of the criminal act of hatred and hate speech, OSCE (p. 51-61).

144 Recommendation R (97) 20 of the Committee of Ministers of the Council of Europe to member states on "hate speech" (The Recommendation R (97) 20 of the Committee of Ministers to the Member States on "hate speech") adopted by the Committee Of Ministers on 30 October 1997 at the 607th meeting.

145 Sürek v. Turkey [GS], No.26682/95, ECHR 1999-IV.

146 The report "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part I – Legal Analysis" (European Union Agency for Fundamental Rights), June 2008, and in The White Paper on Intercultural Dialogue adopted at the 118st session of the Committee of Ministers, 7 May 2008).

147 In the case of Lehideux and Isorni v. France, cited above, the Court made distinction in which cases Article 17 would be applicable and found that this article would be used as the main ground in Holocaust denials and matters of historical fact.

148 In the case of Lawless (No. 3) v. Ireland, cited above, the Court finds that: "... no one may be able to take advantage of the provisions of the Convention on the Enforcement of Acts aiming to violate the mentioned rights and freedoms ..."

discriminatory.[149]" In the case Garaudy v. France, the Court applied Article 17 and did not accept the applicant to invoke the freedom of expression[150].

The decision on inadmissibility in the case Ivanov v. Russia rests on an item related to ethnic hatred. Namely, the applicant, owner, and newspaper editor was convicted of publicly inciting ethnic hatred through mass media. The applicant approved and published series of articles portraying Jews as source of evil in Russia. He accused the entire ethnic group of conspiracy against the Russian people, attributed the fascist ideology to the Jewish leaders, denying the Jews right to national dignity, arguing that they did not form a nation. The Court had no doubt that the applicant had anti-Semitic views and that through his publications there was ethnic hatred towards Jews. According to the Court, "Such a general and severe attack on the ethnic group is contrary to the Convention's values, namely tolerance, social peace, and non-discrimination." The Court's conclusion was that "for the reasons of Article 17 of the Convention, the applicant cannot use the protection afforded by Article 10 of the Convention" due to which his appeal was dismissed as inadmissible ratione materiae in accordance with the provisions of the Convention[151].

Current case law has a clear view that denying the dark moments of history and, in particular, reaching for the freedoms and rights of others cannot be used as a form to deny the past. Article 17 stipulates that no provision of the Convention can be interpreted in such way that a State, group, or individual is given the right to undertake activities or proceedings that jeopardize any right or freedom recognized by the Convention or limit these rights and freedoms in measure greater than one provided in the Convention.

7. 3. 2. Hate speech restriction

In most of the cases before the Court, hate speech is part of the judicial practice regarding restrictions of the right to freedom of expression. This right may be restricted by one or more of the reasons listed in Article 10 § 2 of the Convention if there are clear legal bases that provide procedural and substantive guarantees, if there is clear legitimate aim and if there is balance between the private and the public interests. The exercise of the right to freedom of expression includes obligations and responsibilities and may be applied under conditions laid down by law "which in a democratic society constitute measures necessary for national security, territorial integrity and public security, the protection of order and the prevention of disorder and crime, the protection of the health or morals, the reputation or rights of others, to prevent the dissemination of confidential information or to preserve the authority and impartiality of the judiciary. "The main principles for balancing between private and public interests were established in the case Handyside and for the Court: "State authorities are in principle in better position than international judges to give opinion on the exact content of these requests, as well as the "necessity" of "limitation" or "punishment"[152]...

When facing questions related to the restriction of the right to freedom of expression due to hate speech, the Court analyzes the case as whole, i.e. in the context of the circumstances surrounding the case. The main issue for the Court is whether the applicant intended to spread ideas and opinions using hate speech or attempted to transmit information of public interest. The rule is freedom of expression, and any restriction on freedom of expression must be an exception. Restricting freedom of expression can be justified only by "imperative necessity" and this imposes the existence of "urgent social need". Exceptions to the limitation of the right to this freedom must be interpreted very strictly and clearly.

In assessing whether the restriction on freedom of expression was in conformity with the Convention law, the Court laid down several important standards: the applied restrictive measure needs to be prescribed by law; needs to have a legitimate aim; the restriction is necessary in a democratic society strongly supported by relevant rationale; and to ensure proportional and fair balance between the means employed and the individual freedom of expression.

149 Glimmerveen and Hagenbeek v. The Netherlands, cited above.

150 According to David Keane, the term "direct or indirect" reference to Article 17 "... reflects the history of the use of this provision. The Commission directly invokes Article 17 in the decision for case Glimmerveen and indirectly in the decisions on the cases of Kuhnen and Remer. "Keane David, (2007) Attacking Hate Speech Under Article 17 of the European Convention on Human Rights, Netherlands Quarterly of Human Rights, Volume 25 No.1 March 2007 p.650.

151 Ivanov v. Russia, decision on inadmissibility from 20/02/2007, Application no. 35222/04.

152 Handyside v. The United Kingdom, § 48.

Hate speech can be recognized in a number of spheres of human life. However, given the sensitivity of a multicultural society such as the Macedonian one, the Court's experiences with regards to hate speech in politics regarding faith, race, sexual orientation, and negation can be of particular interest.

Regarding freedom of expression in politics, the Court has held that the right to freedom of expression is "precious to all" and that "it is particularly important for political parties and their active members ..." because they represent voters and their interests. Yet, this freedom is not absolute and requires "politicians in their political speeches to avoid the dissemination of comments that could lead to intolerance.[153]" For these reasons, the Court emphasizes the special responsibility of politicians in the fight against intolerance. In the case Faruk Temel v. Turkey, the Court finds that the applicant's freedom of expression was violated by the Turkish authorities when, as a result of a statement read in the media, criticizing the intervention of the United States of America in Iraq and their approach to the pronounced sanction as the leader of a terrorist organization, was convicted of spreading propaganda based on the claim that he publicly defended the spread of violence by terrorist methods. According to the Court in Strasbourg, his speech did not refer others to violence, armed resistance, or uprising and did not reach levels of hate speech[154]. The freedom of political debate is one of the key concepts of a democratic society that is present in the Convention Law. On the other hand, the limits of acceptable criticism vis-à-vis politicians are much wider compared, to the limits pertaining to private individuals.

In the last few years, the Court has often faced cases of hate speech related to racial or ethnic origin[155]. Some of these cases, "...reflect the anti-immigrant and anti-Islamic discourse present in many European countries, which is mainly associated with the propaganda of hatred[156]".

The case Jersild v. Denmark was the first case of hate speech that after the numerous decisions on inadmissibility, the Court accepted it as admissible and ended with the judgment of the Grand Chamber. This case is of particular interest from the aspect of hate speech and journalistic freedom of expression[157]. In contrast to this case, in the case Leroy v. France, the Court did not find any elements of violation of the right to freedom of expression. Namely, Mr. Leroy, a caricaturist by profession, published a caricature in the Basque weekly presenting the attack on the World Trade Center in New York with the text "We all dreamed of this ... Hamas did it." After being punished with a fine punishment for "approval of terrorism," Mr. Leroy told the Court that this conviction violated his freedom of expression[158]. The Court's assessment was that despite the small circulation of the newspaper, through the published caricature, public reaction to incite violence had been induced and had impact on the public order in the Basque. Therefore, the conclusion was that the state did not violate the Convention by punishing Mr. Leroy and that the right to freedom of expression was not violated in this particular case. One of the latest judgments of the Grand Chamber, related to hate speech on racial background, is the judgment for the case Aksu v. Turkey. Mr. Aksu, before the Strasbourg Court, stated that in three publications (a book on Roma and two dictionaries) funded by the Government, include expressions and remarks that express anti-Roma feelings. The Grand Chamber assessed that there were no elements to analyze this case in terms of a ban on discrimination and discussed the matter with regards to the right to respect for private and family life. In doing so, the Court finds that the book and the two dictionaries are not offensive to the Roma and do not find violation of Article 8 of the Convention[159].

In the case Vejdel and the Others v. Sweden, the Court pointed out that discrimination based on sexual orientation is equally serious as discrimination based on race, origin, and skin color[160]. The applicants in this case distributed in a high school students' cupboards 100 leaflets with abusive content for homosexuals. The leaflets contained information and statements

153 Incal v. Turkey, judgment of the GS from 09/06/1998, Application no. 22678/93 22678/93
154 Faruk Temel v. Turkey, judgment from 01/02/2011, Application no. 16853/05).
155 One of the more recent judgments is the judgment for the case Feret v. Belgium from 16/07/2009, or for example, the judgment for the case Soulas and the Others v. France from 10/07/2008.
156 Françoise Tulkens (When to say is to do Freedom of expression and hate speech in the case-law of the European Court of Human Rights)Freedom of Expression, Essays in Honour of Nicolas Bratza, p.291 (Wolf Legal Publishers 2012).
157 Jersild v. Denmark, judgment of the GS from 23/09/1994, Application no. 15890/89.
158 Leroy v. France, judgment from 02/10/2008, Application no. 36109/03.
159 Aksu v. Turkey Complaints No.4149/04 and 41029/04, GS judgment from 15/03/2012).
160 Vejdeland and the Others v. Sweden, judgment from 09/02/2012, Application no. 1813/07.

that homosexuals have "deviant sexual affection", have "morally destructive effect on society", and are responsible for the development of HIV and AIDS. The appellants before the Court pointed out that their aim was to initiate debate in schools; the Court found that such statements constituted serious and harmful allegations, even if they were not a direct hate appeal. The Court concluded that the restriction on the right to freedom of expression was reasonably established by the Swedish authorities as necessary in a democratic society in order to protect the reputation and rights of others.

In the decision on inadmissibility in the case Norwood v. the United Kingdom, the applicant, who was a British National Party (BNP) activist, placed a large poster with the twin towers in flames on his apartment window with the words "Islam outside Britain - Protection for the British people" and a symbol of a crescent and a star in a prohibition sign. The applicant inter alia, was charged before the national courts with hostility to racial or religious group, for display a sign and other visible expressions that threatened, abused, insulted or disturbed. The Strasbourg court has accepted the approach of the national courts, bearing in mind that "the words and images of the poster are a public expression of an attack on all Muslims in the United Kingdom. Such general and fierce attacks against a religious group, linking the group with a great deal of terrorism, is contrary to the values proclaimed and guaranteed by the Convention, i.e. tolerance, social peace and non-discrimination. By placing a poster on his window, the applicant made an act in the context of Article 17, which does not fall under the protection of Article 10 or 14 ..."

Another form that the Court recognizes as a form through which hate speech is translated is negation. In the case Garaudy v. France, the author of the book Les mythes fondateurs de la politique israélienne (The Founding Myths of Israeli Politics) was charged with denying crimes against the Jewish community and incitement to racial discrimination and hatred. The Court accepted the assessment of the national courts that the contents of the book were strikingly negative and suggested that "the denial of crimes against humanity is ... one of the most serious forms of racial defamation and incitement to hatred towards Jews" and that these actions are contrary to the fundamental values of the Convention.

BIBLIOGRAPHY

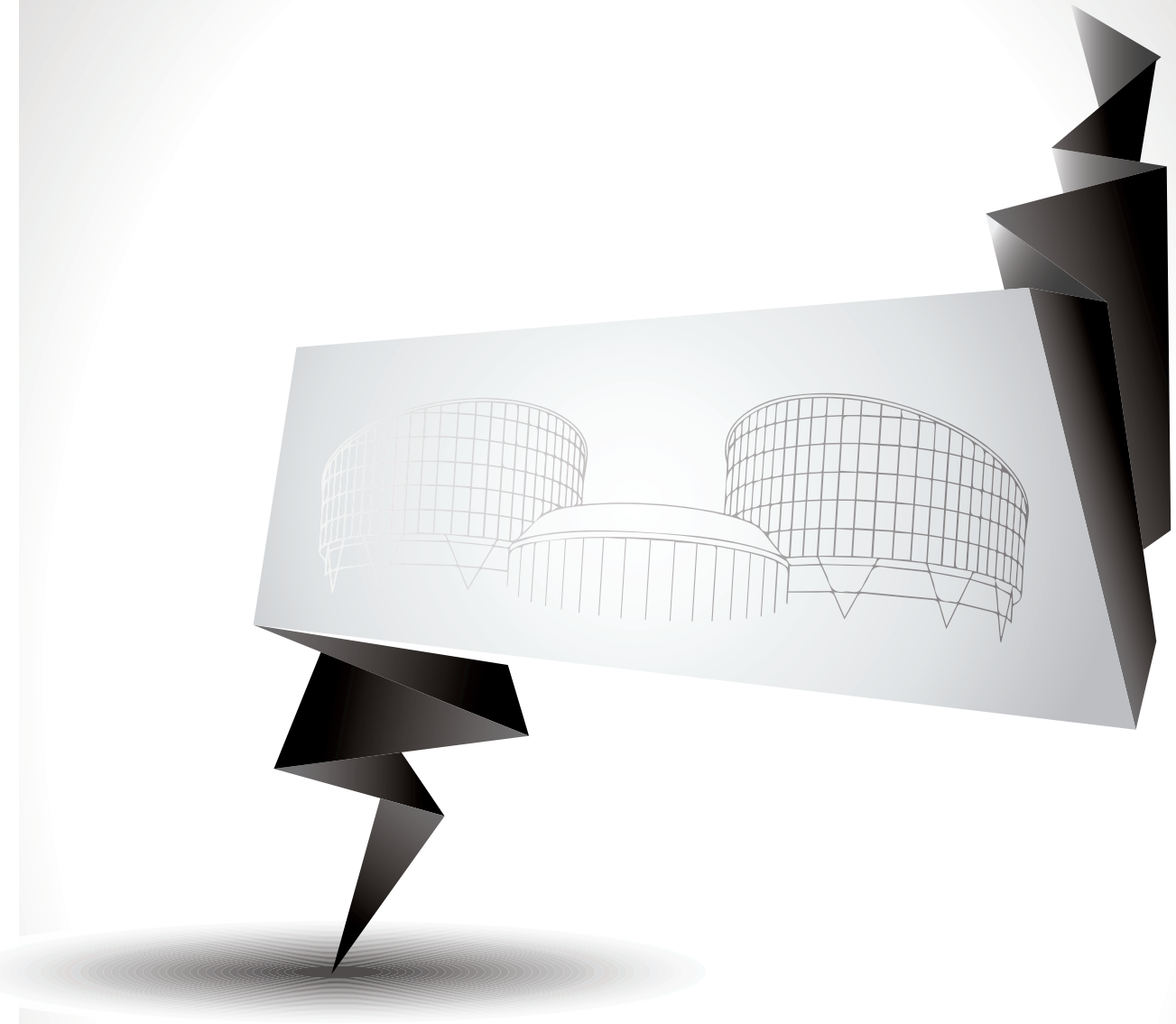
- Barendt, Eric (2013) Defamation and the Net: Anonymity, Meaning, and ISPs, Free speech in an internet era: papers from the Free Speech Discussion Forum / edited by Clive Walker, Russell L. Weaver. - Durham, North Carolina: Carolina Academic Press, 2013. - p. 107-120.
- Bates Ed, (2010) The Evolution of the European Convention on Human Rights From its Inception to the Creation of a Permanent Court of Human Rights; Oxford University Press
- Costa Jean-Paul, (2004) "Some Aspects of the Influence of the European Convention on Human Rights on Domestic Law" - Canivet G; Andenas M. and Fairgrieve D.; (editors) Comparative Law Before the Courts
- van Dijk, P., F. van Hoof, A. van Rijn, L. Zwaan (eds) (2006) Theory and Practice of the European Convention on Human Rights - Intersentia (Antwerpen – Oxford)
- Friberg Erik, (2009) "Bringing Rights Home or How to deal with repetitive applications in the future" Round Table Bled – Slovenia (21-22 September 2009)
- Grabenwarter Christoph (2014), European Convention on Human Rights, Commentary, C.H. Beck. Hart. Nomos Helbing Lichtenhahn Verlag
- Harris, D.J., M. O 'Boyle, E.P. Bates, C.M. Buckley (2009) Law of the European Convention on Human Rights, Second edition Oxford University Press
- Lazarova Trajkovska Mirjana (2015) Privacy, freedom of expression and Internet; Essays in Honour of Dean Spielmann, Wolf Legal Publishers (WLP)
- O'BoyleMichael, "The Convention System as a Subsidiary Source of Law" Coference on the principle of subsidiarity "Stregthening subsidiarity: integrating the court's case-law into national law and judical practice" - Skopje (1-2 October 2010).
- Kambovski V. Lazarova Trajkovska M, (2012) Legal analysis of the concept of the criminal act of hatred and hate speech, OSCE
- Keane, David (2007) "Attacking hate speech under Article 17 of the European Convention on Human Rights "Netherlands quarterly of human rights, vol. 25, No. 4 (Dec.): 641-663
- Sajo, Andras (2004) Freedom of expression, Warszawa : Institute of Public Affairs.
- Tully, Stephen (2014) A human right to access to Internet? Problems and prospects; Publisher Human rights law review, vol. 14, no. 2 (2014), p. 175-195.
- Tulkens Françoise (When to say is to do Freedom of expression and hate speech in the case-law of the European Court of Human Rights) Freedom of Expression, Essays in Honour of Nicolas Bratza, pp.291 (Wolf Legal Publishers 2012).

LEGAL ACTS

- Convention on the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11 and Protocol 14 (http: /www.echr.coe.int)
- Law on Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms (published in the "Official Gazette of the Republic of Macedonia" No. 11/97);
- Law on Litigation Procedure (Consolidated Text) Official Gazette of the Republic of Macedonia no. 7/2011 Article 400;
- Law on Courts ("Official Gazette of the Republic of Macedonia" numbers 58/2006, 35/2008, 150/2010);
- The Law on the Judicial Council of the Republic of Macedonia ("Official Gazette of the Republic of Macedonia" No. 60/2006 and 150/2010);
- Law on Academy for Judges and Public Prosecutors;
- Law on Execution of Judgments of the European Court of Human Rights "Official Gazette of the Republic of Macedonia" no. 67/2009;
- Law on Civil Liability for Insulting and Defamation ("Official Gazette of the Republic of Macedonia" No.143 / 2012).
- Recommendation R (97) 20 of the Committee of Ministers of the Council of Europe to member states on "hate speech" (The Recommendation R (97) 20 of the Committee of Ministers to the Member States on "hate speech") adopted by the Committee Of Ministers on 30 October 1997
- The report on "Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part I - Legal Analysis" (European Union Agency for Fundamental Rights), June 2008, and the White Paper on Intercultural Dialogue adopted at the 118th session of the Committee Of Ministers, 7 May 2008).
- Recommendation Rec (2004) of the Committee of Ministers to the Member States on the European Convention on Human Rights in university education and professional training from 12 May 2004 (http: /www.coe.int);
- Resolution Res (2004) 3 of the Committee of Ministers on the judgments revealing an underlying systemic problem (adopted by the Committee of Ministers on 12 May 2004, at its 114th Session);
- Recommendation Rec (2004) 6 of the Committee of Ministers to Member States on improving domestic remedies (adopted by the Committee of Ministers on 12 May 2004 at its 114th session) (http://wcd.coe.int/ViewDoc. Jsp? Ref = Rec (2004) 6 & Language = lanEnglish & Site = CM & BackColorInternet = C3C3C3 & BackColorIntranet = EDB021 & BackColorLogged = F5D383);
- European Court of Human Rights case law
- A.v. Norway, Application no. 28070/06, judgment from 09/04/2009;
- Airey v. Ireland, Application no. 6289/73, judgment 09/10/1979;
- Aleksey Ovchinnikov v. Russia, Application no. 24061/04, judgment from 16/12/2010;
- Alkaya v. Turkey, Application no. 34438/04, § 58, judgment from 16/04/2009;
- Akdeniz v. Turkey, Application no. 20877/10, judgment from 11/03/2014;
- Aksu v. Turkey, Application no. 4149/04 and 41029/04, judgment of GJ 15/03/2012;
- Appleby and Others v. The United Kingdom, Application no. 44306/98, ECHR 2003-VI;

- August v. The United Kingdom, Application no. 36505/02, adopted on 21/01/2003;
- Autronic AG v. Spain, judgment from 22/05/1990, Series A No. 178;
- Axel Springer v. Germany, Application no. 39954/08, GC judgment 07/02/2012;
- Baka v. Hungary [GC], Application no. 20261/12, § 161, ECHR 2016;
- Ben El Mahi v. Danmark, Application no. 5853/06, ECHR 2006XV;
- Bladet Tromso and Stensaas v. Norway, judgment from 20/05/1999, Application no. 21980/93;
- Colaco Mestre and SIC – Sociedade Independente de Comunicacao, S.A. v. Portugal, Application no. 11182/03, § 27, judgment from 26/04/2007;
- Copland v. The United Kingdom, Application no. 62617/00, judgment from 03/04/2007;
- Campos Dâmaso v. Portugal, Application no. 17107/05, judgment from 24/04/2008;
- Dabrowski v. Poland, judgment from 19/12/2006 Application no. 18235/02& 3;
- Dalban v. Romania, Application no. 28114/95 28/09/1999;
- Delfi AS v. Estonia, Application no. 64569/09, GC judgment from 16/06/2015;
- Dink v. Turkey, Application no. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, judgment from 14/09/2010;
- Dupuis and Others v. France, Application no. 1914/02 ECHR 2007-VII;
- Editions Plon v. France, Application no. 58148/00, § 42, ECHR 2004-IV;
- Editorial Board of Pravoye Delo и Shtekel v. Ukraine, Application no. 33014/05, judgment from 05/05/2011;
- Eerikäinen and Others v. Finland, Application no. 3514/02, § 65, judgment from 10/02/2009;
- Egeland and Hanseid v. Norway, Application no. 34438/04, judgment from 16/04/2009;
- Erbakan v. Turkey, on Applications No. 32153/03 32155/03, judgment from 20/09/2009;
- Ernst and Others v. Belgium, judgment from 15/07/2003, Application no. 33400/96;
- Faruk Temel v. Turkey, judgment from 01/02/2011 Application no. 16853/05;
- Féret v. Belgium, Application no. 15615/07, § 80, judgment from 16/07/2009;
- Flinkkilä and Others v. Finland, Application no. 25576/04, judgment from 06/04/2010;
- Flux v. Moldavia, judgment from 24/11/2009, Application no. 25367/05;
- Fuentes Bobo v. Spain, Application no. 39293/98, judgment from 29/02/2000;
- Gaskin v. The United Kingdom, judgment from 07/07/1989, Application no. 10454/83;
- Glimmerveen and Hagenbeek v. The Netherlands, Applications No.8348/78, 8406/78, 8348/78, Decision on inadmissibility from 11/11/1979;
- Goodwin v. The United Kingdom, judgment from 27/03/1996, Application no. 17488/90;
- Guerra and Others v. Italy, Application no. 14967/89, judgment from 19/02/1998;
- Hachette Filipacchi v. France, Application no. 71111/01, judgment from 14/06/2007;
- Hachette Filipacchi Associés (ICI Paris) v. France, Application no. 12268/03, judgment from 23/07/2009;
- Handyside v. The United Kingdom, judgment from 07/12/1976, Application no. 5493/72;
- Incal v. Turkey, GC judgment 09/06/1998, Application no. 22678/93;
- Ivanov v. Russia, Decision on inadmissibility from 20/02/2007, Application no. 35222/04;
- Jersild v. Denmark, judgment from 23/09/1994, Series A No.298;
- Jerusalem v. Austria, judgment from 27/02/2001, Application no. 26958/95.
- Jokitaipale and Others v. Finland, Application no. 43349/05, judgment from 06/04/2010;
- K. V. Austria, judgment from 02/06/1993, Application no. 16002/90;
- Karhuvaara и Iltalehti v. Finland, judgment from 16/11/2004, Application no. 53678/00;
- Kasabova v. Bulgaria, 19/04/2011, Application no. 22385/03;
- Khmel v. Russia, Application no. 20383/04 judgment from 12/12/2013;
- K.U.v. Finland, Application no. 2872/02, judgment from 02/12/2008;
- Kuchl v. Austria, Application no. 51151/06 from 04/12/2012;
- Kuhnen v. Germany, Application no. 12194/86 from 12/05/1988;
- Lawless No.3 v. Ireland, Application no. 332/57 judgment from 01/07/1961;
- Leander v. Sweden, Application no. 9248/81 from 26/03/1987;
- Lehideux and Isorni v. France, Application no. 24662/94
- Leroy v. France, judgment from 02/10/2008, Application no. 36109/03;
- Le Pen v. France, Application no. 18788/09 from 20/04/2010;
- Lillo Stenber and Saether v. Norway, Application no. 13258/09, judgment from 16/01/2014;
- Lindon, Otchakovsky-Laurens v. France, Applications No.21279/02 36448/02, judgment from 21/10/2007;
- Lingens v. Austria, Application no. 9815/82, judgment from 08/07/1986;
- Lombardo and Others v. Malta, judgment from 24/04/2007, Application no. 7333/06;
- Leempoel & S.A. ED. Ciné Revue, Applications no. 64772/0164772/01, judgment from 09/11/2006;
- M.C. v. Bulgaria, Application no. 39272/98, judgment from 04/12/2003, ECHR 2003-XII);
- McGinley v. The United Kingdom, judgment from 28/01/2000, Applications no. 21825/93 23414/94;
- McCallum v. The United Kingdom, Application no. 9511/81, judgment from 30/08/1990;
- MGN Limited v. The United Kingdom, Application no. 30401/04, judgment from 18/01/2011;
- Mikolajová v. Slovakia, Application no. 4479/03, judgment from 18/01/2011;
- Müller and Others v. Switzerland, judgment from 24/05/1988, Series A No. 133
- Mosley v. The United Kingdom, Application no. 48009/08, judgment from 10/05/2011;
- Mouvement Raëlien Suisse v. Switzerland, Application no. 16354/06, GC judgment from 13/07/2012;
- News Verlags GmbH & Co. KG v. Austria, Application no. 31457/96, ECHR 2000-I; judgment from 11/01/2000;
- Nikowitz and Verlagsgruppe News GmbH v. Austria, Application no. 5266/03, judgment from 22/02/2007;
- Nilsen и Johnsen v. Norway, 199-VIIv, 30 EHRR 878 § 43 GC;

- Oberschlick v. Austria, judgment from 23/05/1991, Application no. 11662/85;
- Observer and Guardian v. The United Kingdom, Application no. 13585/88, judgment from 26/11/1991, Series A No. 216;
- Osman v. The United Kingdom, judgment from 28/10/1998, Reports of Judgments and Decisions 1998-VIII, pp. 3159-60;
- Österreichischer Rundfunk v. Austria, Application no. 57597/00, from 25/05/2004;
- Otegi Mondragon v. Spain, judgment from 15/03/2011, Application no. 2034/07;
- Otto E.F.A Remer v. Germany, Application no. 25096/94, from 19/08/1994;
- Özgür Gündem v. Turkey, § 43, judgment from 16/03/2000, Application no. 23144/93;
- Palomo Sánchez and Others v. Spain, [GC], Applications No. 28955/06, 28957/06, 28959/06 and 28964/06, judgment from 12/09/2011;
- Pedersen and Baadsgaard v. Denmark, judgment from 17/12/2004, Application no. 49017/99;
- Petrina v. Romania, Application no. 78060/01, judgment from 14/10/2008;
- Petrenco v. Moldavia, Application no. 20928/05, § 52, judgment from 30/03/2010; и Aleksey Petrov v. Bulgaria, Application no. 27103/04, from 02/11/2010;
- Perrin v. The United Kingdom, judgment from 18/10/2005, Application no. 5446/03;
- P.G. and J.H. v. The United Kingdom, Application no. 44787/98, §§ 59-60, ECHR 2001IX.
- Prager and Oberschlick v. Austria, Application no. 15974/90, judgment from 26/04/1995;
- Premininy v. Russia, Application no. 44973/04, judgment from 10/02/2011;
- Rees v. The United Kingdom, judgment from 17/10/1986, Series A No. 106, p. 15.
- RefahPartisi and Others v. Turkey, judgment from 13/02/2003, Application no. 41340/98. 41342/98 41343/98;
- ReklosandDavourlis v. Greece, Application no. 1234/05, judgment from 15/01/2009;
- S. and Marper v. The United Kingdom [GCC], No. 30562/04 and 30566/04, § 66, ECHR 2008;
- Saaristo and Others v. Finland, Application no. 184/06, § 61, judgment from 12/10/2010;
- Salov v. Ukraine, judgment from 06/09/2005, Application no. 65518/01;
- Sapan v. Turkey, Application no. 44102/04, § 34, judgment from 08/06/2010;
- Sciacca v. Italy, Application no. 50774/99, § 29, ECHR 2005-I;
- Schüssel v. Austria (decision), Application no. 42409/98 from 21/02/2002;
- Scharsach and News Verlagsgesellschaft GmbH v. Austria, judgment from 13/11/2003, Application no. 39394/98;
- Sidabras and Džiautas v. Lithuania, Applications No. 5480/00 and 59330/00, § 49, ECHR 2004-VIII;
- Sirbu and Others v. Moldavia, Applications No. 73562/01 73565/01 73712/01, judgment from 15/06/2004;
- Soulas and Others v. France, Application no. 15948/03, judgment from 10/07/2008;
- Standard Verlags GmbH v. Austria (No.2), Application no. 21277/05, § 48, judgment from 04/06/2009;
- Stankov and the United Macedonian Organization Ilinden v. Bulgaria, judgment from 03/10/200, Application no. 29221/95 29225/9529221/95 29225/95& 97;
- Steel and Moris v. The United Kingdom, judgment from 15/02/2005, Application no. 68416/01, (2006)41 EHRR 403;
- Sunday Times v. The United Kingdom, judgment from 29/11/1991, Application no. 13166/87;
- Sürek v. Turkey, [Grand Chamber], Application no. 26682/95, judgment from 08/07/1999 ECHR 1999-IV;
- Tanasoaica v. Romania, Application no. 3490/03, § 46, judgment from 19/06/2012;
- Tammer v. Estonia, judgment from 06/02/2001, Application no. 41205/98;
- Timciuc v. Romania, Application no. 28999/03, from 12/10/2010;
- Times Newspapers Ltd v. The United Kingdom, Applications No. 1 and 2, No 3002/03 and 23676/03, § 27, judgment from 10/03/2009;
- Tolstoy Miloslavsky v. The United Kingdom, judgment from 13/07/1995, Series A No. 316-B;
- Thoma v. Luxemburg, judgment from 29/03/2001, Application no. 38432/97;
- Unabhängige Initiative Informationsvielfalt v. Austria, judgment from 26/02/2002, Application no. 28525/95;
- United Communist Party of Turkey v. Turkey, judgment from 30/01/1998, Application no. 19392/92;
- Vejdeland and others v. Sweden, judgment from 09/02/2012, Application no. 1813/07;
- Vereinigung Bildender Künstler v. Austria, judgment from 2/01/2007, Application no. 68354/01;
- Verlagsgruppe News GmbH v. Austria, judgment from 14/12/2006, Application no. 76918/01;
- Vides Aizsardzibas Klubs v. Lithuania, Application no. 57829/00, judgment from 27/05/2004;
- Von Hannover v. Germany (No. 2), Applications no. 40660/08 and 40641/08, GC judgment 07/02/2012;
- Von Hannover v. Germany, judgment from 24/06/2004, Application no. 59320/00, ECHR 2004-VI;
- White v. Sweden, Application no. 42435/02, judgment from 19/09/2006;
- Wille v. Liechtenstein, Application no. 28396/95, judgment from 28/01/1999;
- Willem v. France, Application no. 10883/0510883/05, judgment from 16/06/2009;
- Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft m.b.H. v. Austria (No. 3), Applications No. 66298/01 and 15653/02, § 47, judgment from 13 of December;
- X and Y v. The Netherlands, judgment from 26/03/1985, Series A No. 91;
- Yildirim v. Turkey, Application no. 3111/10, judgment from 18/12/2012.



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