Norway, such as the safeguarding of the quality of political debate, guaranteeing pluralism, maintaining the independence of broadcasters from political parties and preventing powerful financial groups from taking advantage having access to commercial political ads on TV, were relevant but not sufficient reasons to justify, in the specific circumstances of the case, the total prohibition of this form of political advertising. Accordingly, in the Court's view, there had been a violation of Article 10 of the Convention.[48] It is obvious that the Court's judgment has initiated or renewed the debate in many countries in Europe whether or not a ban on political advertising on television is still a legitimate restriction on freedom of political speech and access to paid political advertising. Due to the judgment in the case against Norway, some countries have already modified or are reviewing their legislation on this topic.[49]

### 3.2. FREEDOM OF EXPRESSION, PUBLIC DEBATE AND DEFAMATION OF POLITICIANS OR PUBLIC FIGURES

One of the main characteristics of the Court's case law over the years is the emphasis on the freedom of political debate and critical information regarding politics and politicians. The Court has recognised that there are *wider limits of acceptable criticism as regards a politician or a public figure* as such, than as regards a private individual. In several judgments, the Court has reiterated that a politician

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[48] Compare with ECtHR (Judgment) 10 July 2003, Case No. 44179/98, *Murphy* v. *Ireland*, where the Court found a ban on religious advertising on television in accordance with Article 10 of the Convention. The Court considered that religious advertising on television would lean in favour of unbalanced usage by religious groups with larger resources. It accepted a total ban on religious advertising on television in Ireland, referring to the country-specific religious sensitivities. For the Court it was important that the applicant, a pastor attached to the Irish Faith Centre, a Bible based Christian ministry in Dublin, was kept free to advertise in any of the print media or to participate as any other citizen in programmes on religious matters and to have services of his church broadcast in the audiovisual media.

[49] See also T. Lewis, "Reasserting the Primacy of Broadcast Political Speech after Animal Defenders International? - Rogaland Pensioners Party v. Norway", 1 *Journal of Media Law* (2009), p. 37-48.

"inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance."[50] The Court went a step further regarding public debate and criticism about *governments and executive bodies*, as "the limits of permissible criticism are wider with regard to a government than in relation to a private citizen, or even a politician. In a democratic system the actions or omissions of the government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the press and public opinion. Furthermore, the dominant position which the government occupies makes it necessary for it to display restraint in resorting to libel proceedings, particularly where other means are available for replying to the unjustified attacks and criticisms of its adversaries or the media."[51] Members of parliament, local politicians, governments, public authorities or public figures in general have to accept even sharp criticism, sometimes expressed in a harsh or hostile tone.[52]

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[50] ECtHR (Judgment) 29 March 2005, Case No. 72713/01, *Ukrainian Media Group* v. *Ukraine*.

[51] See e.g. ECtHR (Judgment) 26 July 2007, Case No. 25968/02, *Dyuldin and Kislov* v. *Russia*.

[52] ECtHR (Judgment) 8 July 1986, Case No. 9815/82, *Lingens* v. *Austria*; ECtHR (Judgment) 23 April 1992, Case No. 11798/85, *Castells* v. *Spain*; ECtHR (Judgment) 28 August 1992, Case No. 13704/88, *Schwabe* v. *Austria*; ECtHR (Judgment) 1 July 1997, Case No. 20834/92, *Oberschlick (n° 2)* v. *Austria*; ECtHR (Judgment) 28 September 1999, Case No. 22479/93, *Öztürk* v. *Turkey*; ECtHR (Judgment) 28 September 1999, Case No. 28114/95, *Dalban* v. *Romania*; ECtHR (Judgment) 28 October 1999, Case No. 28396/95, *Wille* v. *Liechtenstein*; ECtHR (Judgment) 16 March 2000, Case No. 23144/93, *Özgür Gündem* v. *Turkey*; ECtHR (Judgment) 15 June 2000, Case No. 25723/94, *Erdogdu* v. *Turkey*; ECtHR (Judgment) 3 October 2000, Case No. 37698/97, *Lopes Gomes da Silva* v. *Portugal*; ECtHR (Judgment) 27 February 2001, Case No. 26958/95, *Jerusalem* v. *Austria*; ECtHR (Judgment) 12 July 2001, Case No. 29032/95, *Feldek* v. *Slovakia*; ECtHR (Judgment) 7 February 2002, Case No. 28496/95, *E.K.* v. *Turkey*; ECtHR (Judgement) 26 February 2002, Case No. 29271/95, *Dichand and Others* v. *Austria*; ECtHR (Judgment) 25 June 2002, Case No. 51279/99, *Colombani and Others* v. *France*; ECtHR (Judgment) 13 February 2003, Case Nos. 40153/98; 40160/98, *Çetin* v. *Turkey*; ECtHR (Judgment) 4 March 2004, Case No. 27214/95, *C.S.Y.* v. *Turkey*; ECtHR (Judgment) 27 May 2004, Case No. 57829/00, *Vides Aizsardzības Klubs* v. *Latvia*; ECtHR (Judgment) 16 November 2004, Case No. 53678/00, *Karhuvaara and Iltalehti* v. *Finland*; ECtHR (Judgment) 29 March 2005, Case No. 75955/01, *Sokolowski* v. *Poland*; ECtHR (Judgment) 29 March 2005, Case No. 72713/01,

Journalists themselves however must also accept criticism in a polemical tone, e.g. by other journalists or by politicians.[53] Also police officers, members of the military, public prosecutors and even judges can be sharply criticised under the protection of Article 10 of the Convention.[54] On many occasions

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*Ukrainian Media Group* v. *Ukraine*; ECtHR (Judgment) 27 July 2005, Case No. 23472/03, *Grinberg* v. *Russia*; ECtHR (Judgment) 27 October 2005, Case No. 58547/00, *Wirtschafts-Trend Zeitschriften-Verlags Gmbh* v. *Austria*; ECtHR (Judgment) 13 December 2005, Case Nos. 15653/02; 66298/01, *Wirtschafts-Trend Zeitschriften-Verlagsgesellschaft m.b.H. (n° 3)* v. *Austria*; ECtHR (Judgment) 6 April 2006, Case No. 43797/98, *Malisiewicz-Gąsior* v. *Poland*; ECtHR (Judgment) 11 April 2006, Case No. 71343/01, *Brasilier* v. *France*; ECtHR (Judgment) 18 April 2006, Case No. 29288/02, *Roseiro Bento* v. *Portugal*; ECtHR (Judgment) 10 August 2006, Case No. 21040/02, *Lyashko* v. *Ukraine*; ECtHR (Judgment) 21 September 2006, Case No. 73604/01, *Monnat* v. *Switzerland*; ECtHR (Judgment) 7 November 2006, Case No. 12697/03, *Mamère* v. *France*; ECtHR (Judgment) 19 December 2006, Case No. 62202/00, *Radio Twist* v. *Slovakia*; ECtHR (Judgment) 1 March 2007, Case No. 510/04, *Tønsbergs Blad AS and Haukom* v. *Norway*; ECtHR (Judgment) 24 April 2007, Case No. 7333/06, *Lombardo* v. *Malta*; ECtHR (Judgment) 26 April 2007, Case Nos. 11319/03; 11182/03, *Colaço Mestre and Sociedado Independente de Communicacão (SIC)* v. *Portugal*; ECtHR (Judgment) 5 June 2007, Case No. 12979/04, *Gorelishvili* v. *Georgia*; ECtHR (Judgment) 12 June 2007, Case No. 32558/03, *Flux (n° 3)* v. *Moldova*; ECtHR (Judgment) 26 June 2007, Case No. 75510/01, *Artun and Güvener* v. *Turkey*; ECtHR (Judgment) 5 July 2007, Case No. 1131/05, *Lionarakis* v. *Greece*; ECtHR (Judgment) 12 July 2007, Case No. 16657/03, *A.S. Diena and Ozoliņš* v. *Latvia*; ECtHR (Judgment) 31 July 2007, Case No. 25968/02, *Dyuldin and Kislov* v. *Russia*; ECtHR (Judgment) 8 July 2008, Case No. 57659/00, *Kita* v. *Poland*; ECtHR (Judgment) 17 July 2008, Case No. 42211/07, *Riolo* v. *Italy*; ECtHR (Judgment) 24 February 2009, Case No. 23806/03, *Dlugolęcki* v. *Poland* and ECtHR (Judgment) 2 April 2009, Case No. 24444/07, *Kydonis* v. *Greece*.

[53] ECtHR (Judgment) 29 November 2005, Case No. 75088/01, *Urbino Rodrigues* v. *Portugal* and ECtHR (Judgment) 17 July 2007, Case No. 28949/03, *Sanocki* v. *Poland*. See however also ECtHR (Judgment) 21 March 2000, Case No. 24773/94, *Andreas Wabl* v. *Austria*.

[54] ECtHR (Judgment) 25 June 1992, Case No. 13778/88, *Thorgeir Thorgeirson* v. *Iceland*; ECtHR, (Judgment) 24 February 1997, Case No. 19983/92, *De Haes and Gijsels* v. *Belgium*; ECtHR (Judgment) 20 July 2004, Case No. 49418/99, *Hrico* v. *Slovakia*; ECtHR (Judgment) 28 September 2004, Case No. 46572/99, *Sabou and Pîrcălab* v. *Romania*; ECtHR (Judgment) 20 April 2004, Case No. 60115/00, *Amihalachioaie* v.

the Court emphasized *the essential function the press fulfils in a democratic society*, and it even mentioned "the duty" of the press to impart, in a manner consistent with its obligations and responsibilities, *information and ideas on all matters of public interest*.[55] According to the Court, "journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation." The safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is however subject to the proviso that "they are acting in good faith and on an accurate factual basis

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*Moldova*; ECtHR (Judgment) 11 October 2005, Case No. 11039/02, *Saviţchi* v. *Moldova*; ECtHR, Grand Chamber (Judgment) 15 December 2005, Case No. 73797/01, *Kyprianou* v. *Cyprus*; ECtHR (Judgment) 20 April 2006, Case No. 47579/99, *Raichinov* v. *Bulgaria*; ECtHR (Judgment) 26 July 2007, Case No. 64209/01, *Peev* v. *Bulgaria*; ECtHR (Judgment) 17 July 2007, Case No. 30278/04, *Ormanni* v. *Italy*; ECtHR (Judgment) 8 January 2008, Case No. 19353/03, *Saygılı, Bilgiç and Kurtay* v. *Turkey*; ECtHR (Judgment) 14 February 2008, Case No. 20893/03, *July and SARL Libération v. France*; ECtHR (Judgment) 1 July 2008, Case No. 17343/04, *Flux (n° 5)* v. *Moldova* and ECtHR (Judgment) 8 January 2009, Case No. 34736/03, *Obukhova* v. *Russia*. Compare with ECtHR (Judgment) 22 February 1989, Case No. 11508/85, *Barfod* v. *Denmark*; ECtHR (Judgment) 26 April 1995, Case No. 15974/90, *Prager and Oberschlick* v. *Austria*; ECtHR, Grand Chamber (Judgment) 6 May 2003, Case No. 48898/99, *Perna* v. *Italy*; ECtHR (Judgment) 30 March 2006, Case No. 32458/96, *Saday* v. *Turkey*; ECtHR (Judgment) 2 November 2006, Case No. 60899/00, *Kobenter and Standard Verlags GmbH* v. *Austria*; ECtHR (Judgment) 9 November 2006, Case No. 64772/01, *Leempoel and S.A. Ciné Revue* v. *Belgium*; ECtHR, Grand Chamber (Judgment) 17 December 2004, Case No. 33348/96, *Cumpănă and Mazăre* v. *Romania*, 17 December 2004 and ECtHR (Judgment) 17 December 2004, Case No. 49017/99, *Pedersen and Baadsgaard* v. *Denmark*.

[55] Although it is not obvious how this "duty" can be legally enforced.

and provide "reliable and precise" information in accordance with the ethics of journalism."[56] The *satirical character* of a text or a cartoon and the irony underlying it are also to be taken into account.[57]

The European Court has also stood up for other basic democratic values to be reflected in freedom of expression, such as e.g. *gender equality.* In one of its latest judgments (*Bodrovic and Vuijn* v. *Serbia*) the Court made clear to the Serbian authorities that comparing an adult man to a blonde woman is not *ipso facto* defamatory or insulting. The Court is struck by the argument "of the domestic courts in this connection, as later endorsed by the Government, that comparing an adult man to a blonde woman constituted an attack on the integrity and dignity of men. Moreover, the domestic authorities considered such a comparison objectively insulting within their society. However, the Court finds that argument derisory and unacceptable."[58]

### 3.3. THE RIGHT TO PRIVACY: ALSO FOR POLITICIANS?

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[56] ECtHR (Judgment) 21 January 1999, Case No. 29183/95, *Fressoz and Roire* v. *France*; ECtHR, Grand Chamber (Judgment) 20 May 1999, Case No. 21980/93, *Bladet Tromsø and Stensaas* v. *Norway*; ECtHR (Judgment) 29 March 2005, Case No. 72713/01, *Ukrainian Media Group* v. *Ukraine*. See also ECtHR, Grand Chamber (Judgment) 10 December 2007, Case No. 69698/01, *Stoll* v. *Switzerland.*

[57] ECtHR (Judgment) 29 March 2005, Case No. 75955/01, *Sokolowski* v. *Poland*; ECtHR (Judgment) 29 March 2005, Case No. 72713/01, *Ukrainian Media Group* v. *Ukraine*.; ECtHR (Judgment) 27 October 2005, Case No. 58547/00, *Wirtschafts-Trend Zeitschriften-Verlags Gmbh* v. *Austria*; ECtHR (Judgment) 4 May 2006, Case No. 40287/98, *Alinak* v. *Turkey*; ECtHR (Judgment) 31 October 2006, Case No. 72208/01, *Klein* v. *Slovakia*; ECtHR (Judgment) 22 February 2007, Case No. 5266/03, *Nikowitz and Verlagsgruppe News GmbH* v. *Austria*; ECtHR (Judgment) 12 July 2007, Case No. 16657/03, *A.S. Diena and Ozoliņš* v. *Latvia* and ECtHR (Judgment) 9 June 2009, Case No. 17095/03, *Cihan Öztürk* v. *Turkey*. See also ECtHR (Judgment) 18 July 2002, Case No. 34320/96, *Freiheitliche Landesgruppe Burgenland* v. *Austria* and ECtHR (Judgment) 25 January 2007, Case No. 68354/01, *Vereinigung Bildender Künstler* v. *Austria*.

[58] ECtHR (Judgment) 23 June 2009, Case No. 38435/05, *Bodrozic and Vuijn* v. *Serbia*.

On several occasions the Court has observed that private individuals and to some extent also public persons have a legitimate expectation of protection of and respect for their *private life* and that they may legitimately expect to be protected against intrusion of their privacy or against the propagation of unfounded rumours relating to intimate aspects of their private life.[59] Freedom of the press does not extend to idle gossip about intimate or extra-marital relations merely serving to satisfy the curiosity of a certain readership and not contributing to any public debate in which the press has to fulfil its role of "public watchdog."[60] As the Court has accepted that also the *personal reputation* and the name, image or picture of individuals, including public figures, are part of private life as protected under Article 8 of the Convention,[61] the balancing between the right of privacy (Article 8) and the right to freedom of

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[59] ECtHR (Judgment) 6 February 2001, Case No. 41205/98, *Tammer* v. *Estonia*; ECtHR (Judgment) 28 January 2003, Case No. 44647/98, *Peck* v. *UK*; ECtHR (Judgment) 26 April 2004, Case No. 59320/00, *Von Hannover* v. *Germany*; ECtHR (Judgment) 17 October 2006, Case No. 71678/01, *Gourguénidzé* v. *Georgia*; ECtHR (Judgment) 9 November 2006, Case No. 64772/01, *Leempoel and S.A. Ciné Revue* v. *Belgium*;; ECtHR (Judgment) 9 April 2009, Case No. 28070/06, *A.* v. *Norway*; ECtHR (Judgment) 16 April 2009, Case No. 34438/04, *Egeland and Hanseid* v. *Norway* and ECtHR (Judgment) 4 June 2009, Case No. 21277/05, *Standard Verlags GmbH (n° 2)* v. *Austria*. Compare with ECtHR (Judgment) 19 September 2006, Case No. 42435/02, *White* v. *Sweden*; ECtHR (Judgment) 10 February 2009, Case No. 3514/02, *Eerikäinen and Others* v. *Finland* and ECtHR (Judgment) 28 April 2009, Case No. 39311/05, *Karakó* v. *Hungary*. See also: ECtHR (Judgment) 25 November 2008, Case No. 36919/02, *Armonienė* v. *Lithuania* and ECtHR (Judgment) 25 November 2008, Case No. 23373/03, *Biriuk* v. *Lithuania*.

[60] ECtHR (Judgment) 4 June 2009, Case No. 21277/05, *Standard Verlags GmbH (n° 2)* v. *Austria* . See however the dissenting opinion in this case arguing that the state of marriage of a head of state can be regarded as a topic of public interest, that the rumours concerning the presidential couple's marriage that were circulated were of some relevance and that all in all the impugned text remained within the limits of acceptable comment in a democratic society.

[61] According to the Court, "private life" extends to aspects relating to personal identity, such as a person's name or picture, and furthermore includes a person's physical and psychological integrity. The guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings. There is therefore a zone of

expression (Article 10) became a difficult exercise, highly contested, including within the European Court.[62] The Court has more recently clarified that the inherent logic of Article 10 precludes the possibility of conflict with Article 8.[63] In the Court's view, the expression "the rights of others" mentioned in Article 10 (2) encompasses the right to personal integrity and serves as a ground for limitation of freedom of expression in so far as the interference designed to protect private life is proportionate. A critical statement or a negative opinion about a politician, regarding facts and behaviour in relation to his public activities, made during an election campaign in which he was a candidate, is not considered to have an impact on the private life of the person concerned. In such circumstances the Court is of the opinion that the alleged harm of the reputation as a politician is not a sustainable claim regarding the protection of the right to respect for personal integrity under Article 8

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interaction of a person with others, even in a public context, which may fall within the scope of "private life": ECtHR (Judgment) 26 April 2004, Case No. 59320/00, *Von Hannover* v. *Germany* and ECtHR (Judgment) 15 November 2007, Case No. 12556/03, *Pfeifer* v. *Austria*.

[62] ECtHR (Judgment) 30 March 2004, Case No. 53984/00, *Radio France* v. *France*; ECtHR (Judgment) 26 April 2004, Case No. 59320/00, *Von Hannover* v. *Germany*; ECtHR (Judgment) 19 September 2006, Case No. 42435/02, *White* v. *Sweden*; ECtHR (Judgment) 17 October 2006, Case No. 71678/01, *Gourguénidzé* v. *Georgia*; ECtHR (Judgment) 9 November 2006, Case No. 72331/01, *Krone Verlags GMBH & CO KG. (n° 4)* v. *Austria*; ECtHR (Judgment) 14 December 2006, Case No. 5433/02, *Shabanov and Tren* v. *Russia*; ECtHR, Grand Chamber (Judgment) 22 October 2007, Case Nos. 21279/02; 36448/02, *Lindon, Otchakovsky-Laurens and July* v. *France*; ECtHR (Judgment) 15 November 2007, Case No. 12556/03, *Pfeifer* v. *Austria*; ECtHR (Judgment) 14 October 2008, Case No. 78060/01, *Petrina* v. *Romania*; ECtHR (Judgment) 25 November 2008, Case No. 36919/02, *Armonienė* v. *Lithuania*; ECtHR (Judgment) 25 November 2008, Case No. 23373/03, *Biriuk* v. *Lithuania*; ECtHR (Judgment) 9 April 2009, Case No. 28070/06, *A.* v. *Norway*; ECtHR (Judgment) 16 April 2009, Case No. 34438/04, *Egeland and Hanseid* v. *Norway* and ECtHR (Judgment) 4 June 2009, Case No. 21277/05, *Standard Verlags GmbH (n° 2)* v. *Austria* . Compare with ECtHR (Judgment) 10 February 2009, Case No. 3514/02, *Eerikäinen and Others* v. *Finland* and ECtHR (Judgment) 28 April 2009, Case No. 39311/05, *Karakó* v. *Hungary*.

[63] For a thorough analysis on conflicts between human rights, including freedom of expression and the right of privacy, see E. Brems (ed.), *Conflicts Between Fundamental Rights* (Antwerp, Intersentia 2008).

of the Convention. A limitation on freedom of expression for the sake of a politician would in such a context be disproportionate under Article 10 of the Convention.[64] The Court has accepted that it can reasonably be regarded as justified under the Convention to give more weight to the freedom of the press to impart information of public concern than a politician's or public figure's interest in protecting his or her private life and correspondence.[65] The Court has also clarified that liability for insult or defamation of governments, institutions or other state bodies is difficult to reconcile with the right to freedom of expression: "a fundamental requirement of the law of defamation is that in order to give rise to a cause of action the defamatory statement must refer to a particular person. If all State officials were allowed to sue in defamation in connection with any statement critical of administration of State affairs, even in situations where the official was not referred to by name or in an otherwise identifiable manner, journalists would be inundated with lawsuits. Not only would that result in an excessive and disproportionate burden being placed on the media, straining their resources and involving them in endless litigation, it would also inevitably have a chilling effect on the press in the performance of its task of purveyor of information and public watchdog."[66]

### 3.4. MEDIA, NGOS AND CIVIL SOCIETY AS 'PUBLIC WATCHDOG'

The European Court has made clear that in a democratic society, in addition to the press, *Nongovernmental organisations (NGOs), campaign groups or organisations, with a message outside the mainstream* must be able to carry on their activities effectively and be able to rely on a high level of freedom of expression, as there is "a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on

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64 ECtHR (Judgment) 28 April 2009, Case No. 39311/05, *Karakó* v. *Hungary*.

65 ECtHR (Decision), 16 June 2009, Case No. 38079/06, *Jonina Benediktsdóttir* v. *Iceland*. See also ECtHR (Judgment) 21 January 1999, Case No. 29183/95, *Fressoz and Roire* v. *France* and ECtHR (Judgment) 19 December 2006, Case No. 62202/00, *Radio Twist* v. *Slovakia*.

66 ECtHR (Judgment) 31 July 2007, Case No. 25968/02, *Dyuldin and Kislov* v. *Russia*.

matters of general public interest such as health and the environment."[67] In a democratic society public authorities are to be exposed to *permanent scrutiny by citizens* and everyone has to be able to draw the public's attention to situations that they consider unlawful.[68] The Court has also argued that freedom of expression is of particular importance for persons belonging to *minorities*.[69]

Particular attention is paid to the public interest involved in the *disclosure of information*, contributing to debate on matters of public interest: "In a democratic system the acts or omissions of government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of the media and public opinion. The interest which the public may have in particular information can sometimes be so strong as to override even a legally imposed duty of confidence."[70] In such circumstances a journalist, a civil servant, an activist or a staff member of an NGO should not be prosecuted or sanctioned because of breach of confidentiality or the use of illegally obtained documents.[71] The Court has accepted that the interest in protecting the publication of information

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[67] ECtHR (Judgment) 23 September 1998, Case No. 24838/94, *Steel and Others* v. *UK*. See also ECtHR (Judgment) 25 August 1998, Case No. 25181/94, *Hertel* v. *Switzerland*; ECtHR (Judgment) 28 June 2001, Case No. 24699/94, *VGT Verein gegen Tierfabriken* v. *Switzerland*; ECtHR (Judgment) 4 October 2007, Case No. 32772/02, *VGT Verein gegen Tierfabriken (n° 2)* v. *Switzerland*; ECtHR (Judgment) 27 May 2004, Case No. 57829/00, *Vides Aizsardzības Klubs* v. *Latvia* and ECtHR (Judgment) 7 November 2006, Case No. 12697/03, *Mamère* v. *France*. See also ECtHR (Judgment) 29 October 1992, Case No. 14234/88; 14235/88, *Open Door and Dublin Well Women* v. *Ireland*; ECtHR (Judgment) 25 November 1999, Case No. 25594/94, *Hashman and Harrup* v. *UK*; ECtHR (Judgment) 20 September 2007, Case No. 57103/00, *Çetin and Şakar* v. *Turkey* and ECtHR (Judgment) 3 February 2009, Case No. 31276/05, *Women on Waves* v. *Portugal*.

[68] ECtHR (Judgment) 27 May 2004, Case No. 57829/00, *Vides Aizsardzības Klubs* v. *Latvia*.

[69] ECtHR (Judgment) 17 February 2004, Case No. 44158/98, *Gorzelik* v. *Poland*.

[70] ECtHR, Grand Chamber (Judgment) 12 February 2008, Case No. 14277/04, *Guja* v. *Moldova*.

[71] ECtHR (Judgment) 21 January 1999, Case No. 29183/95, *Fressoz and Roire* v. *France*; ECtHR, *Dammann v. Switzerland*, 25 April 2006; ECtHR (Judgment) 7 June 2007, Case No. 1914/02, *Dupuis and Others* v. *France*; ECtHR (Judgment) 26 July 2007, Case No. 64209/01, *Peev* v. *Bulgaria* and ECtHR, Grand Chamber

originating from a source which obtained and retransmitted the information unlawfully may in certain circumstances outweigh those of an individual or an entity, private or public, in maintaining the confidentiality of the information. A newspaper that has published illegally gathered emails between two public figures, directly related to a public discussion on a matter of serious public concern, can be shielded by Article 10 of the Convention against claims based on the right of privacy as protected under Article 8 of the Convention.[72]

In its Grand Chamber judgment in *Stoll* v. *Switzerland*, the Court confirmed that "press freedom assumes even greater importance in circumstances in which State activities and decisions escape democratic or judicial scrutiny on account of their confidential or secret nature. The conviction of a journalist for disclosing information considered to be confidential or secret may discourage those working in the media from informing the public on matters of public interest. As a result the press may no longer be able to play its vital role as "public watchdog" and the ability of the press to provide accurate and reliable information may be adversely affected."[73] In cases in which journalists reported about confidential information in a sensationalist way[74] or in which the revealed documents did not concretely or effectively contribute to public debate or only concerned information about the private

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(Judgment) 12 February 2008, Case No. 14277/04, *Guja* v. *Moldova*. See also ECtHR (Judgment) 19 December 2006, Case No. 62202/00, *Radio Twist* v. *Slovakia*.

[72] ECtHR (Decision), 16 June 2009, Case No. 38079/06, *Jonina Benediktsdóttir* v. *Iceland*. See also ECtHR (Judgment) 21 January 1999, Case No. 29183/95, *Fressoz and Roire* v. *France* and ECtHR (Judgment) 19 December 2006, Case No. 62202/00, *Radio Twist* v. *Slovakia*.

[73] ECtHR, Grand Chamber (Judgment) 10 December 2007, Case No. 69698/01, *Stoll* v. *Switzerland*. See also ECtHR (Judgment) 27 March 1996, Case No. 17488/90, *Goodwin* v. *UK* and ECtHR (Judgment) 21 January 1999, Case No. 29183/95, *Fressoz and Roire* v. *France*.

[74] ECtHR, Grand Chamber (Judgment) 10 December 2007, Case No. 69698/01, *Stoll* v. *Switzerland.*

life of the persons concerned,[75] the Court accepted (proportionate) interferences in their freedom of expression.

In the Grand Chamber judgment in *Guja* v. *Moldova*, the Court recognised the need of *protection of whistleblowers* by Article 10 of the Convention. The Court noted "that a civil servant, in the course of his work, may become aware of in-house information, including secret information, whose divulgation or publication corresponds to a strong public interest. The Court thus considers that the signalling by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection. This may be called for where the employee or civil servant concerned is the only person, or part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large." Although disclosure should be made in the first place to the person's superior or other competent authority or body, the Court accepted that when such a practice is clearly impractical, the information could, as a last resort, be disclosed to the public. The Court held that the dismissal of a civil servant for leaking two confidential letters from the public prosecutor's office to the press was in breach of Article 10 of the Convention, also referring to the *serious chilling effect* of the applicant's dismissal for other civil servants or employees, discouraging them from reporting any misconduct.[76]

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[75] ECtHR (Judgment) 9 November 2006, Case No. 64772/01, *Leempoel and S.A. Ciné Revue* v. *Belgium* and ECtHR (Judgment) 3 February 2009, Case No. 30699/02, *Marin* v. *Romania*. See also ECtHR (Judgment) 14 March 2002, Case No. 46833/99, *De Diego Nafria* v. *Spain* and ECtHR, Grand Chamber (Judgment) 17 December 2004, Case No. 33348/96, *Cumpănă and Mazăre* v. *Romania*.

[76] ECtHR, Grand Chamber (Judgment) 12 February 2008, Case No. 14277/04, *Guja* v. *Moldova*. See also ECtHR (Judgment) 5 October 2006, Case No. 14881/03, *Zakharov* v. *Russia*; ECtHR (Judgment) 26 July 2007, Case No. 64209/01, *Peev* v. *Bulgaria*; ECtHR (Judgment) 13 November 2008, Case Nos. 64119/00; 76292/01, *Kayasu* v. *Turkey*; ECtHR (Judgment) 13 January 2009, Case No. 39656/03, *Ayhan Erdoğan* v. *Turkey*; ECtHR (Judgment) 19 February 2009, Case No. 4063/04, *Marchenko* v. *Ukraine* and ECtHR (Judgment) 26 February 2009, Case No. 29492/05, *Kudeshkina* v. *Russia*.

Especially in cases where *information is published on alleged corruption, fraud or illegal activities* in which politicians, civil servants or public institutions are involved, journalists, publishers, media and NGOs can count on the highest standards of protection of freedom of expression.[77] The Court has

[77] See ECtHR (Judgment) 28 September 1999, Case No. 28114/95, *Dalban* v. *Romania*;; ECtHR (Judgment) 29 March 2001, Case No. 38432/97, *Thoma* v. *Luxembourg*; ECtHR (Judgment) 12 July 2001, Case No. 29032/95, *Feldek* v. *Slovakia*; ECtHR (Judgment) 25 June 2002, Case No. 51279/99, *Colombani and Others* v. *France*; ECtHR (Judgment) 27 May 2004, Case No. 57829/00, *Vides Aizsardzības Klubs* v. *Latvia*; ECtHR (Judgment) 28 September 2004, Case No. 46572/99, *Sabou and Pîrcălab* v. *Romania*; ECtHR (Judgment) 16 November 2004, Case No. 53678/00, *Karhuvaara and Iltalehti* v. *Finland*; ECtHR (Judgment) 29 March 2005, Case No. 72713/01, *Ukrainian Media Group* v. *Ukraine*.; ECtHR (Judgment) 29 March 2005, Case No. 75955/01, *Sokolowksi* v. *Poland*; ECtHR (Judgment) 7 October 2008, Case No. 5945/03, *Barb* v. *Romania*; ECtHR (Judgment) 14 October 2008, Case No. 34434/02, *Folea* v. *Romania*; ECtHR (Judgment) 10 July 2003, Case No. 44179/98, *Murphy* v. *Ireland*; ECtHR (Judgment) 13 November 2008, Case Nos. 64119/00; 76292/01, *Kayasu* v. *Turkey* and ECtHR (Judgment) 3 March 2009, Case No. 4411/04, *Băcanu and SC 'R' SA* v. *Romania*. See also most Russian cases related to criticizing politicians or other public figures: ECtHR (Judgment) 27 July 2005, Case No. 23472/03, *Grinberg* v. *Russia*; ECtHR (Judgment) 14 December 2006, Case No. 29372/02, *Karman* v. *Russia*; ECtHR (Judgment) 22 February 2007, Case No. 12365/03, *Krasulya* v. *Russia*; ECtHR (Judgment) 31 July 2007, Case No. 25968/02, *Dyuldin and Kislov* v. *Russia*; ECtHR (Judgment) 31 July 2007, Case No. 72683/01, *Chemodurov* v. *Russia*; ECtHR (Judgment) 14 October 2008, Case No. 37406/03, *Dyundin* v. *Russia*; ECtHR (Judgment) 23 October 2008, Case No. 14888/03, *Godlevskiy* v. *Russia*; ECtHR (Judgment) 18 December 2008, Case No. 1758/02, *Kazakov* v. *Russia*; ECtHR (Judgment) 8 January 2009, Case No. 34736/03, *Obukhova* v. *Russia* and ECtHR (Judgment) 26 February 2009, Case No. 29492/05, *Kudeshkina* v. *Russia*. For Moldova and Bulgaria, see e.g. ECtHR (Judgment) 21 December 2004, Case No. 61513/00, *Busuioc* v. *Moldova*; ECtHR (Judgment) 12 June 2007, Case No. 32558/03, *Flux (n° 3)* v. *Moldova*; ECtHR (Judgment) 3 July 2007, Case No. 32558/03, *Flux (n° 2)* v. *Moldova*; ECtHR (Judgment) 16 October 2007, Case No. 36305/03, *Ţara and Poiată* v. *Moldova*; ECtHR (Judgment) 23 October 2007, Case No. 28700/03, *Flux and Samson* v. *Moldova*; ECtHR (Judgment) 12 February 2008, Case No. 17294/04, *Flux (n° 4)* v. *Moldova*; ECtHR (Judgment) 1 July 2008, Case No. 17343/04, *Flux (n° 5)* v. *Moldova*; ECtHR (Judgment) 20 April 2006, Case No. 47579/99, *Raichinov* v. *Bulgaria* and ECtHR (Judgment) 6 November 2008, Case No. 68294/01, *Kandzhov* v. *Bulgaria*.

emphasised that "in a democratic state governed by the rule of law the use of improper methods by public authority is precisely the kind of issue about which the public has the right to be informed."[78] The Court expressed the opinion that "the press is one of the means by which politicians and public opinion can verify that public money is spent according to the principles of accounting and not used to enrich certain individuals."[79] Defamation laws and proceedings cannot be justified if their purpose or effect is to prevent legitimate criticism of public officials or the exposure of official wrongdoing or corruption. A right to sue in defamation for the reputation of officials could easily be abused and might prevent free and open debate on matters of public interest or scrutiny of the spending of public money.[80]

The Court's case law has also clarified that news reporting based on *interviews*, whether edited or not, constitutes one of the most important means by which the press is able to play its vital role of "public watchdog." Punishing a journalist for assisting in the dissemination of statements made by another person would seriously hamper the contribution of the press to discussion of matters of public interest and should not be allowed unless there are particularly strong reasons for doing so.[81] The fact that interviews or statements are given by a member of a proscribed or illegal (terrorist) organisation cannot in itself justify a blanket ban on the exercise of freedom of expression by the media and journalists. Although a prohibition to publish or broadcast an *interview with spokesmen of a terrorist organisation* can be justified,[82] the Court has clarified that "regard must be had to the words used and

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78 ECtHR (Judgment) 22 November 2007, Case No. 64752/01, *Voskuil* v. *Netherlands*.

79 ECtHR (Judgment) 14 November 2008, Case No. 9605/03, *Krone Verlag GmbH & Co (n° 5)* v. *Austria.*

80 ECtHR (Judgment) 9 June 2009, Case No. 17095/03, *Cihan Özturk* v. *Turkey*.

81 ECtHR (Judgment) 23 September 1994, Case No. 15890/89, *Jersild* v. *Denmark*; ECtHR (Judgment) 29 March 2001, Case No. 38432/97, *Thoma* v. *Luxembourg*; ECtHR (Judgment) 11 October 2005, Case No. 11039/02, *Saviţchi* v. *Moldova* and ECtHR (Judgment) 23 October 2007, Case No. 28700/03, *Flux and Samson* v. *Moldova.*

82 ECommHR (Decision), 16 April 1991, Case No. 15404/89, *Betty Purcell and Others* v. *Ireland*, 70 *Decisions and Reports of the European Commision of Human Rights* (1991), p. 262; ECommHR (Decision), 9 May

the context in which they were published, with a view to determining whether the impugned text, taken as a whole, can be considered an incitement to violence (...). When a publication cannot be categorised as such, Contracting States cannot with reference to national security or territorial integrity restrict the right of the public to be informed by bringing the weight of the criminal law to bear on the media."[83] A requirement for journalists to distance themselves systematically and formally from the content of a *quotation* (from e.g. another newspaper or magazine) is not reconcilable with the press's role of providing information on current events, opinions and ideas.[84] Methods of balanced reporting may vary considerably and "it is not for the Court, nor for the national courts for that matter, to substitute their own views for those of the press as to what techniques of reporting should be adopted by journalists."[85] Article 10 not only protects the substance of the imparted information, but also the *form* in which information or ideas are conveyed or expressed.

An interference by public authorities by means of prosecution or other judicial measures with regard to the *journalist's research and investigative activities* calls for the most scrupulous examination from

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1994, Case No. 18714/91, *D. Brind and Others* v. *UK*, 77-A *Decisions and Reports of the European Commision of Human Rights* (1994), p. 42 and ECommHR (Decision), 9 May 1994, Case No. 18759/91, *J.M. McLaughlin* v. *UK.* See also ECommHR (Decision), 17 May 1984, Case No. 10799/84, *Radio X., S., W. and A.* v. *Switzerland*, 37 *Decisions and Reports of the European Commision of Human Rights* (1984), p. 236. Compare with ECtHR (Judgment) 16 March 2000, Case No. 23144/93, *Özgür Gündem* v. *Turkey* and ECtHR (Judgment) 13 February 2003, Case Nos. 40153/98; 40160/98, *Çetin* v. *Turkey*.

[83] ECtHR (Judgment) 9 December 2008, Case No. 11976/03, *Demirel and Ates (n° 3)* v. *Turkey*. See also ECtHR (Judgment) 20 January 2009, Case No. 24748/03, *Imza* v. *Turkey*.

[84] ECtHR (Judgment) 29 March 2001, Case No. 38432/97, *Thoma* v. *Luxembourg* and ECtHR (Judgment) 10 March 2009, Case No. 10129/04, *Özgür Radio-Ses Radyo-Televizyon Yayin Yapim Ve Tanitim A.Ş. (n° 3)* v. *Turkey*.

[85] See ECtHR (Judgment) 23 September 1994, Case No. 15890/89, *Jersild* v. *Denmark*; ECtHR (Judgment) 29 March 2001, Case No. 38432/97, *Thoma* v. *Luxembourg* and ECtHR (Judgment) 10 February 2009, Case No. 3514/02, *Eerikäinen and Others* v. *Finland.*

the perspective of Article 10 of the Convention.[86] It is based on this perspective that *journalistic sources* enjoy a very high level of protection in terms of Article 10 of the Convention. According to the Court, "protection of journalistic sources is one of the basic conditions for press freedom, as is recognised and reflected in various international instruments including the Committee of Ministers Recommendation (...). Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest."[87] Searches and confiscations of journalistic material in order to reveal the identity of an informant can hardly be justified from this perspective. The Court has considered that "even if unproductive, a search conducted with a view to uncover a journalist's source constitutes a more serious measure than an order to divulge a source's identity. This is because investigators who raid a journalist's workplace unannounced and armed with search warrants have very wide investigation powers, as, by definition,

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[86] See ECtHR (Judgment) 24 February 1997, Case No. 19983/92, *De Haes and Gijsels* v. *Belgium*; ECtHR (Judgment) 21 January 1999, Case No. 29183/95, *Fressoz and Roire* v. *France*; ECtHR, Grand Chamber (Judgment) 20 May 1999, Case No. 21980/93, *Bladet Tromsø and Stensaas* v. *Norway*; ECtHR (Judgment) 3 October 2000, Case No. 34000/96, *Du Roy and Malaurie* v. *France*; ECtHR (Judgment) 29 March 2001, Case No. 38432/97, *Thoma* v. *Luxembourg*; ECtHR (Judgment) 25 June 2002, Case No. 51279/99, *Colombani and Others* v. *France*; ECtHR (Judgment) 27 May 2004, Case No. 57829/00, *Vides Aizsardzības Klubs* v. *Latvia*; ECtHR (Judgment) 19 December 2006, Case No. 62202/00, *Radio Twist* v. *Slovakia*; ECtHR (Judgment) 29 March 2005, Case No. 72713/01, *Ukrainian Media Group* v. *Ukraine* and ECtHR (Judgment) 7 June 2007, Case No. 1914/02, *Dupuis and Others* v. *France*.

[87] ECtHR (Judgment) 27 March 1996, Case No. 17488/90, *Goodwin* v. *UK*. See also ECtHR (Decision) 8 December 2005, Case No. 40485/02, *Nordisk Film & TV A/S* v. *Denmark* and ECtHR (Judgment) 31 May 2007, Case No. 40116/02, *Šečič v. Croatia*.

they have access to all the documentation held by the journalist."[88] On several occasions, the European Court was of the opinion that searches of media offices, the home and place of work of journalists or reporters amounted to a violation of Article 10 of the Convention.[89]

### 3.5. OPINIONS, VALUE JUDGMENTS AND DEFAMATORY ALLEGATIONS

An important characteristic of the Court's case law is the distinction between (defamatory) *allegations of fact and value judgments*: "the existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10."[90] The European Court is of the opinion that it is not, in principle, incompatible

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88 ECtHR (Judgment) 23 February 2003, Case No. 51772/99, *Roemen and Schmit* v. *Luxembourg.*

89 ECtHR (Judgment) 23 February 2003, Case No. 51772/99, *Roemen and Schmit* v. *Luxembourg*; ECtHR (Judgment) 15 July 2003, Case No. 33400/96, *Ernst and Others* v. *Belgium*; ECtHR (Judgment) 22 November 2007, Case No. 64752/01, *Voskuil* v. *Netherlands* and ECtHR (Judgment) 27 November 2007, Case No. 20477/05, *Tillack* v. *Belgium*. The Court however found no violation of Article 10 in ECtHR (Judgment) 31 March 2009, Case No. 38224/03, *Sanoma Uitgevers BV* v. *Netherlands* (see <http://echrblogspot.com/2009/04/protection-of-journalists-sources.html>. In application of Art. 43 ECHR the panel of five judges of the ECtHR on 14 September 2009 has accepted that the case will be referred to the Grand Chamber. See also Committee of Ministers of the Council of Europe, *Recommendation No. R (2000)7 on the right of journalists not to disclose their sources of information*, 8 March 2000, at <www.coe.int/t/dghl/standardsetting/media/>; D. Banisar, *Silencing Sources. An International Survey of Protections and Threats to Journalists' Sources*, 2007, at <www.privacyinternational.org> and D. Voorhoof, "The protection of journalistic sources under fire?" in D. Voorhoof (ed.), *European Media Law. Collection of Materials 2009-2010* (Gent, Knops Publishing 2009) p. 266-284.

90 See ECtHR (Judgment) 27 February 2001, Case No. 26958/95, *Jerusalem* v. *Austria*; ECtHR (Judgment) 21 December 2004, Case No. 61513/00, *Busuioc* v. *Moldova*; ECtHR, Grand Chamber (Judgment) 6 May 2003, Case No. 48898/99, *Perna* v. *Italy*; ECtHR, Grand Chamber (Judgment) 17 December 2004, Case No. 33348/96, *Cumpănă and Mazăre* v. *Romania*; ECtHR (Judgment) 17 December 2004, Case No. 49017/99,

with Article 10 to place the onus of proving to the civil standard the truth of defamatory statements on a defendant who wishes to rely on the defence of justification in libel proceedings.[91] Formulated in another way: "a requirement for defendants in defamation proceedings to prove to a reasonable standard that the allegations made by them were substantially true does not, as such, contravene the Convention."[92] A journalist, publisher or author needs however to be given the opportunity to prove the truth of his or her statement: depriving him or her of an effective opportunity to adduce evidence to support the statements and thereby attempt to establish their truthfulness or to show that their content was not entirely without foundation, constitutes a disproportionate interference with the right to freedom of expression.[93] In *Csanics* v. *Hungary* the Court confirmed that domestic authorities should provide effective opportunities to substantiate one's statements, even if they are to be considered "gratuitously insulting, offensive and harsh." According to the Court "it would go against the very spirit of Article 10 to allow a restriction on the expression of substantiated statements solely on the basis of the manner in which they are voiced. In principle, it should be possible to make true declarations in public irrespective of their tone or negative consequences for those who are concerned by them."[94]

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*Pedersen and Baadsgaard* v. *Denmark*; ECtHR (Judgment) 29 March 2005, Case No. 72713/01, *Ukrainian Media Group* v. *Ukraine* and ECtHR (Judgment) 5 October 2006, Case No. 14881/03, *Zakharov* v. *Russia*.

[91] See ECtHR (Judgment) 22 May 2008, Case No. 17550/03, *Alithia Publishing Company Ltd. & Constantinides* v. *Cyprus*. See also ECtHR (Decision), 10 February 2009, Case No. 28577/05, *The Wall Street Journal Europe SPRL and Others* v. *UK*.

[92] ECtHR (Judgment) 14 February 2008, Case No. 36207/03, *Rumyana Ivanova* v. *Bulgaria*.

[93] See ECtHR (Judgment) 23 April 1992, Case No. 11798/85, *Castells* v. *Spain*; ECtHR, (Judgment) 24 February 1997, Case No. 19983/92, *De Haes and Gijsels* v. *Belgium*; ECtHR (Judgment) 12 June 2007, Case No. 32558/03, *Flux (n° 3)* v. *Moldova*; ECtHR (Judgment) 23 October 2007, Case No. 28700/03, *Flux and Samson* v. *Moldova* and ECtHR (Judgment) 3 March 2009, Case No. 4411/04, *Băcanu and SC 'R' SA* v. *Romania*.

[94] ECtHR (Judgment) 20 January 2009, Case No. 12188/06, *Csánics* v. *Hungary*.

In its recent case law, the Court has also applied Article 10 in the digital context and regarding libellous content on the Internet.[95] In the case of *Times Newspaper Ltd*. v. *U.K.* the Court applied the so-called "*Internet publication rule*", accepting that the British courts' finding of libel by the *continued publication on the Internet site* of two articles had not represented a disproportionate restriction on the newspaper's freedom of expression. The Court did not consider that the requirement to publish an appropriate qualification to the Internet version of the articles constituted a disproportionate interference with the right to freedom of expression. The Court however emphasized "that while an aggrieved applicant must be afforded a real opportunity to vindicate his right to reputation, libel proceedings brought against a newspaper after a significant lapse of time may well, in the absence of exceptional circumstances, give rise to a disproportionate interference with press freedom under Article 10."[96]

In cases where journalists did not succeed to give *reliable or relevant evidence* for their (serious) allegations, insinuations or accusations, the Court accepts convictions and (proportionate) sanctions imposed by the national authorities as not being in breach with Article 10 of the Convention.[97] The

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[95] ECtHR (Judgment) 10 March 2009, Case Nos. 3002/03; 23676/03, *Times Newspapers Ltd (n° 1-2*) v. *UK*. For other internet-related cases, see ECtHR (Decision), 18 October 2005, Case No. 5446/03, *Perrin* v. *UK*; ECtHR (Judgment) 8 April 2008, Case No. 21151/04, *Megadat.com SRL* v. *Moldova*; ECtHR (Decision), 16 September 2008, Case No. 32792/05, *Laurence Pay* v. *UK* and ECtHR (Judgment) 2 December 2008, Case No. 2872/02, *K.U.* v. *Finland*.

[96] ECtHR (Judgment) 10 March 2009, Case Nos. 3002/03; 23676/03, *Times Newspapers Ltd (n° 1-2*) v. *UK*.

[97] See ECtHR (Judgment) 26 April 1995, Case No. 15974/90, *Prager and Oberschlick* v. *Austria*; ECtHR (Judgment) 27 June 2000, Case No. 28871/95, *Constantinescu* v . *Romania*; ECtHR (Judgment) 7 May 2002, Case No. 46311/99, *Mc-Vicar* v. *UK*; ECtHR, Grand Chamber (Judgment) 6 May 2003, Case No. 48898/99, *Perna* v. *Italy*; ECtHR (Judgment) 30 March 2004, Case No. 53984/00, *Radio France* v. *France*; ECtHR (Judgment) 29 June 2004, Case No. 64915/01, *Chauvy* v. *France*; ECtHR, Grand Chamber (Judgment) 17 December 2004, Case No. 33348/96, *Cumpănă and Mazăre* v. *Romania*; ECtHR (Judgment) 17 December 2004, Case No. 49017/99, *Pedersen and Baadsgaard* v. *Denmark*; ECtHR (Judgment) 21 December 2004,

requirement that a journalist needs to prove that the allegations made in an article were "substantially true" on the balance of probabilities, constitutes a justified restriction on the right to freedom of expression under Article 10(2) of the Convention.[98] In some cases the obvious lack of evidence of published allegations made the Court even decide on the (manifest) inadmissibility of a complaint under Article 10 of the Convention.[99] On the other hand, the Court has also considered that, as part of their role as a "public watchdog," the media's reporting on "'stories' or 'rumours' - emanating from

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Case No. 61513/00, *Busuioc* v. *Moldova*; ECtHR (Judgment) 31 January 2006, Case No. 53899/00, *Stângu and Scutelnicu* v. *Romania*; ECtHR (Judgment) 14 February 2008, Case No. 36207/03, *Rumyana Ivanova* v. *Bulgaria*; ECtHR (Judgment) 22 May 2008, Case No. 17550/03, *Alithia Publishing Company Ltd. & Constantinides* v. *Cyprus*; ECtHR (Judgment) 8 July 2008, Case No. 24261/05, *Backes* v. *Luxembourg*; ECtHR (Judgment) 29 July 2008, Case No. 22824/04, *Flux (n° 6)* v. *Moldova*; ECtHR (Judgment) 16 September 2008, Case No. 36157/02, *Cuc Pascu* v. *Romania*; ECtHR (Judgment) 14 October 2008, Case No. 78060/01, *Petrina* v. *Romania*; ECtHR (Judgment) 4 November 2008, Case No. 42512/02, *Mihaiu* v. *Romania*; ECtHR (Judgment) 18 December 2008, Case No. 35877/04, *Mahmudov and Agazade* v. *Azerbaijan* and ECtHR (Judgment) 5 February 2009, Case No. 42117/04, *Brunet-Lecomte and Others* v. *France*. In some cases the Court found no violation of Article 10, while it accepted that the applicant had not been guaranteed a fair trial and that there had been a violation of Article 6(1) of the Convention: see e.g. ECtHR (Judgment) 27 June 2000, Case No. 28871/95, *Constantinescu* v . *Romania* and ECtHR (Judgment) 4 November 2008, Case No. 42512/02, *Mihaiu* v. *Romania*.

98 ECtHR (Judgment) 7 May 2002, Case No. 46311/99, *Mc-Vicar* v. *UK* and ECtHR (Judgment) 17 December 2004, Case No. 49017/99, *Pedersen and Baadsgaard* v. *Denmark*.

99 See e.g. ECtHR (Decision) 4 April 2006, Case No. 33352/02, *László Keller* v. *Hongary*; ECtHR (Decision) 15 June 2006, Case No. 6928/04 and 6929/04, *Corneliu Vadim Tudor* v. *Romania*; ECtHR (Decision) 8 February 2007, Case No. 3540/04, *Falter Zeitschriften GmbH* v. *Austria*; ECtHR (Decision) 21 October 2008, Case No. 20953/06, *Tomasz Wolek, Rafal Kasprów and Jacek Lęski* v. *Poland* and ECtHR (Decision) 21 October 2008, Case No. 37115/06, *Vittorio Sgarbi* v. *Italy*. See also ECtHR (Decision) 16 October 2001, Case No. 45710/99, *Verdens Gang and Kari Aarsted Aase* v. *Norway* and ECtHR (Decision) 21 February 2002, Case No. 43525/98, *Gaudio* v. *Italy*.

persons other than an applicant - or 'public opinion'" is to be protected.[100] The Court at several occasions accepted that value judgments, allegations or statements only had "a slim factual basis" or that it was sufficient that there was "no proof the description of events given in the articles was totally untrue," or that the "opinions were based on facts which have not been shown to be untrue".[101] The Court accepted that value judgments and criticism can be based on "unconfirmed allegations or rumours."[102] The Court does not accept the reasoning of domestic courts that allegations of serious misconduct levelled against individuals or public persons should first have been proven in criminal proceedings.[103] Describing an act or behaviour of a politician as "illegal" is to be considered as expressing a personal legal opinion amounting to a value judgment of which the accuracy cannot be

[100] See e.g. ECtHR (Judgment) 25 June 1992, Case No. 13778/88, *Thorgeir Thorgeirson* v. *Iceland* and ECtHR (Judgment) 9 June 2009, Case No. 17095/03, *Cihan Özturk* v. *Turkey*.

[101] See e.g. ECtHR (Judgment) 25 November 1999, Case No. 23118/93, *Nilsen and Johnsen* v. *Norway*; ECtHR (Judgment) 28 September 1999, Case No. 28114/95, *Dalban* v. *Romania*; ECtHR (Judgement) 26 February 2002, Case No. 29271/95, *Dichand and Others* v. *Austria* and ECtHR (Judgment) 23 October 2007, Case No. 28700/03, *Flux and Samson* v. *Moldova*.

[102] ECtHR (Judgment) 27 November 2007, Case No. 42864/05, *Timpul Info-Magazin and Anghel* v. *Moldova*. See also ECtHR (Judgment) 9 June 2009, Case No. 17095/03, *Cihan Özturk* v. *Turkey*. The Court in this case however also considered that "there was a sufficient factual basis for the applicant to make a critical analysis of the situation and to raise questions about the restoration project, since the authorities had already brought criminal proceedings against the applicant for breach of duty".

[103] See ECtHR (Judgment) 25 November 1999, Case No. 23118/93, *Nilsen and Johnsen* v. *Norway*; ECtHR (Judgment) 29 July 2008, Case No. 22824/04, *Flux (n° 6)* v. *Moldova*; ECtHR (Judgment) 14 October 2008, Case No. 34434/02, *Folea* v. *Romania*; ECtHR (Judgment) 14 October 2008, Case No. 37406/03, *Dyundin* v. *Russia*; ECtHR (Judgment) 23 October 2008, Case No. 14888/03, *Godlevskiy* v. *Russia*; and ECtHR (Judgment) 2 April 2009, Case No. 24444/07, *Kydonis* v. *Greece*. Compare with ECtHR (Judgment) 27 June 2000, Case No. 28871/95, *Constantinescu* v . *Romania* and ECtHR (Judgment) 14 October 2008, Case No. 78060/01, *Petrina* v. *Romania*.

required to be proven.[104] Media applying the standards of journalistic ethics or journalists acting in consonance with the principles of "responsible journalism" are strongly protected by Article 10 of the Convention.[105] This does not imply that a journalist must act in compliance with norms of good journalistic practice in all circumstances in order to be shielded by Article 10 of the Convention. In a recent judgment the Court was of the opinion that, although it would have been "advisable" for a newspaper and its journalists to have obtained comments beforehand from a person that was criticised in the newspaper for being involved in fraud and improper use of public funding, "the mere fact that it had not done so is not sufficient to hold that the interference with the applicant company's right to freedom of expression was justified."[106]

### 3.6. PUBLIC SPEECH, ARTS, EXPRESSIVE CONDUCT AND ACADEMIC SPEECH

The high level of protection of freedom of expression for media and journalists and public debate has also been applied to interferences by authorities in *demonstrations, peaceful protest activities, public speeches*, or other activities contributing to debate on matters of public interest. In many cases the Court found a violation of Article 10, often in relation to Article 11 of the Convention (freedom of assembly and association).[107] The Court is of the opinion "that one of the aims of freedom of assembly

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[104] ECtHR (Judgment) 27 May 2004, Case No. 57829/00, *Vides Aizsardzības Klubs* v. *Latvia*. See also ECtHR (Judgment) 16 November 2004, Case No. 56767/00, *Selistö* v. *Finland* and ECtHR (Judgment) 16 November 2004, Case No. 53678/00, *Karhuvaara and Iltalehti* v. *Finland.*

[105] ECtHR (Judgment) 23 October 2007, Case No. 28700/03, *Flux and Samson* v. *Moldova* and ECtHR (Judgment) 27 November 2007, Case No. 42864/05, *Timpul Info-Magazin and Anghel* v. *Moldova*.

[106] ECtHR (Judgment) 14 November 2008, Case No. 9605/03, *Krone Verlag GmbH & Co (n° 5)* v. *Austria.*

[107] ECtHR (Judgment) 23 September 1998, Case No. 24838/94, *Steel and Others* v. *UK*; ECtHR (Judgment) 25 November 1999, Case No. 25594/94, *Hashman and Harrup* v. *UK*; ECtHR (Judgment) 7 October 2008, Case No. 5529/05, *Patyi and Others* v. *Hungary*; ECtHR (Judgment) 21 October 2008, Case No. 5290/02, *Unay* v. *Turkey*; ECtHR (Judgment) 21 October 2008, Case No. 17129/02¸ *Isak Tepe* v. *Turkey*; ECtHR (Judgment) 13 January 2009, Case No. 31451/03, *Açik* v. *Turkey*; ECtHR (Judgment) 27 January 2009, Case No.