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# Investigative Journalism

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AHMET YILDIRIM v. TURKEY (ECtHR 18/12/2012, 3111/10).

Joanna Kulesza

## Internet Content Suppression

**DEF:** Internet content suppression (ICS) practices impede the possibility to access, receive or impart information and thus impose restrictions on individual's right to freedom of expression as outlined in Article 19 of the ICCPR and Article 10 of the ECHR.

ICS (or internet censorship) results from legislative and technical measures. Technical measures (e.g., filtering and blocking) on information communication network or a part of it are used to cause temporary, permanent, *ex-ante* (e.g., blocking an Internet Protocol) or *ex-post* (e.g., removing comments) ICS.

**INSTR/CASES:** For ICS practices to be compatible with the human rights framework, ICS measures have to meet the criteria foreseen in Article 19(3) ICCPR or in Article 10(2) ECHR. Recently, more guidance on states' obligations on freedom of expression in the ICT has been provided in jurisprudence, international and regional declarations.

When faced with issues of ICS, the ECtHR on several occasions has applied a framework established in its case law interpreting Article 10(2) ECHR. In a case of [AHMET YILDIRIM, 2013], concerning the court order (in the third party case) blocking access to an online service, the ECtHR, when considering the formal and material criteria for ICS, stated that having a measure 'prescribed by law' does not suffice to limit freedom of expression. The measure should be precise, accessible to the public, result in predictable outcomes and be compatible with the rule of law. The ECtHR

has been criticised for not developing minimum criteria for ICS and not invoking proportionality or necessity tests, which go beyond the requirement of the rule of law. The ECtHR decision in [DELFI, 2015] remained reluctant to such criticism and did not consider technical aspects of ICT. Instead, it invoked the margin of appreciation doctrine and concluded that a measure limiting freedom of expression of a news portal had been proportional with its aims and thus compatible with the ECHR.

**CONCL:** National laws provide legal ground for ICS. While many states fight illegal and harmful content (e.g., hate speech or child sexual abuse images), the scope of ICS laws varies among states and is shaped by social, legal and historical factors. Similar to the offline context, states' measures providing for restrictions on freedom of expression in the online context have to comply with the cumulative criteria outlined in Article 19(3) of the ICCPR. According to these criteria, limitations on the freedom of expression can be imposed if they 'are provided by law and are necessary (a) to protect the rights or reputations of others; (b) to protect national security or public order, or public health or morals'.

### REFERENCES:

- Joint Declaration on Freedom of Expression and responses to conflict situations, 4 May 2015 (available at [www.ohchr.org](http://www.ohchr.org) accessed 06/2016).  
 UN Human Rights Committee: General Comment No. 34, Article 19 Freedoms of opinion and expression (CCPR/C/GC/34), 12 September 2011.  
 UN Human Rights Council: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/HRC/17/27), 16 May 2011.  
 AHMET YILDIRIM v. TURKEY (ECtHR18/03/2013, 3111/10).  
 DELFI v. ESTONIA (ECtHR16/06/2015, 64569/09).

Paul de Hert/Lina Jasmontaite

## Investigative Journalism (and Protection of Sources)

**DEF:** Investigative journalism (I.J.) is practised by journalists (reporters, editors) or Internet blog-

gers, sometimes assisted by documentalists, whistleblowers and other concerned citizens, who profoundly research, describe and publish issues of public interest. Protection of sources is often a requirement for I.J., since the practices or documents in question – e.g. political affairs, crimes or negative corporate practices – have usually been kept secret or confidential before their disclosure. One of the most prominent cases revealed by I.J. has been the ‘Watergate Scandal’ of 1972 (break-in at the headquarters of the Democratic Party in Washington), which later led to the resignation of US President Richard Nixon.

**INSTR/CASES:** In principle, the diverse forms of I.J. and the related protection of journalistic sources fall under the provisions of Article 19 UDHR and Article 10 ECHR (Freedom of Expression and Information). In this context, the ECtHR observed that ‘the vital public watchdog role of the press could be undermined’ if journalistic sources are not protected [GOODWIN, 1996] and that the use of surveillance systems by the Dutch secret service against two investigative journalists violated human rights [TELEGRAAF MEDIA..., 2012]. The court also found that even the interference in the private life of a witness by using a hidden camera in an interview could be justified due to ‘the public interest in information on malpractice’ of insurance brokers [HALDIMANN AND OTHERS, 2015]. On the other hand, the Grand Chamber of the ECtHR came to a different conclusion in a case [BÉDAT, 2016] involving ‘sensationalist’ reports based on unlawful investigations – such as quoting in a newspaper secret judicial records of interviews and letters sent by a defendant to a Swiss judge – as they were considered to endanger ‘the right to protection of reputation’ (Article 8 ECHR) and did not ‘contribute[d] to any public debate on the ongoing investigation’.

**CONCL:** The soaring ‘information overload’ – due to millions of actors in the new digital media world and including deliberate disinformation, hidden campaigning or → ‘trolling’ practices – could let the call of the ECtHR for ‘accurate and reliable information in accordance with the ethics of journalism’ [BLADET TROMSØ AND STENSAAS v. NORWAY, 1999] appear like a plea in a lost cause. However, the skills of investigative journalists

with searching, evaluating, prioritising and verifying experience in both traditional and digital fields of communication have never been more important than they are today, not the least because they can also enhance ‘information literacy’ in the broader public. While the current case law favours – at least on the European level – independent journalistic investigation without interference of the state, NGOs such as the Global Investigative Journalism Network (<http://gijn.org/>) or Article 19 ([www.article19.org](http://www.article19.org)) still see the need to provide advice or even legal and financial support for journalists, since governments and private companies do not always respect this standard.

#### REFERENCES:

- BÉDAT v. SWITZERLAND (ECtHR 29/03/2016, 56925/08).  
 GOODWIN v. UNITED KINGDOM (ECtHR 27/03/1996, 17488/90).  
 HALDIMANN AND OTHERS v. SWITZERLAND (ECtHR 24/02/2015, 21830/09).  
 TELEGRAAF MEDIA NEDERLAND LANDELIJKE MEDIA B.V. v. THE NETHERLANDS (ECtHR 22/11/2012, 39315/06).

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## Journalists

**DEF:** Journalists and the media play a crucial role in democratic societies. They disseminate information and ideas (widely), thus influencing opinion-forming, and they perform the role of ‘public watchdog’ by monitoring governmental authorities and exposing corruption and wrongdoing. They therefore enjoy a high level of freedom of expression, but are also expected to adhere to journalistic codes of ethics. The nature of journalism has recently been undergoing major changes. Facilitated by Internet-based communications technologies, a growing range of actors now participate in public debate alongside journalists and the media. All too often, journalists reporting on controversial matters of public interest are killed, attacked, threatened, unlawfully detained or imprisoned as a result of their work. Impunity for the perpetrators of crimes against journalists is a grave problem in a number of European countries.