



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

**DIVISION DE LA RECHERCHE  
RESEARCH DIVISION**

---

*Articles 2, 3 and 10  
The safety of journalists*

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Publishers or organisations wishing to translate and/or reproduce all or part of this report in the form of a printed or electronic publication are invited to contact [publishing@echr.coe.int](mailto:publishing@echr.coe.int) for information on the authorisation procedure.

If you wish to know which translations of the Case-Law research reports are currently under way, please see [Pending translations](#).

This report has been prepared by the Research and Library division, Directorate of the Jurisconsult and does not bind the Court. It may be subject to editorial revision.

The manuscript for this text has been finalised on 6 December 2013.

The [Case-Law research reports](#) are available for downloading at [www.echr.coe.int](http://www.echr.coe.int) (Case-law – Case-law analysis). For publication updates please follow the Court's Twitter account at <https://twitter.com/echrpublication>.

© Council of Europe/European Court of Human Rights, 2013

## TABLE OF CONTENTS

INTRODUCTION .....	4
<i>A. Positive obligations under the European Convention on Human Rights     ("ECHR")</i> .....	4
<i>B. Freedom of expression (Article 10)</i> .....	5
<i>C. The duty to protect life (Article 2)</i> .....	7

**ARTICLES 2, 3 and 10**  
**THE SAFETY OF JOURNALISTS**

## **INTRODUCTION**

Journalists may face different types of physical danger from threats, attempted or actual assaults, abductions, disappearances, and even death. The very nature of their profession may also expose them to ill treatment, arbitrary arrest, unfair court proceedings, and interference with their correspondence or search and seizure operations. This summary of the European Court of Human Rights' ("the Court's") case-law will focus on the nature of positive obligations under the European Convention on Human Rights, before turning to the issue of the safety of journalists (protection of their physical integrity) from the point of view of Article 10 (freedom of expression), as well as Article 2 (the right to life), and Article 3 (the prohibition of torture and inhuman and degrading treatment).<sup>1</sup>

### ***A. Positive obligations under the European Convention on Human Rights ("ECHR")***

The Court has held that although the essential object of many provisions of the Convention is to protect the individual against arbitrary interference by public authorities, there may in addition be positive obligations inherent in an effective respect of the rights concerned, even in the sphere of relations between individuals (or other non-State entities). The Court has found that such obligations may arise under Article 2<sup>2</sup> and Article 3<sup>3</sup> as well as under Article 8<sup>4</sup>, Article 10<sup>5</sup> and Article 11<sup>6</sup>.

How does the Court evaluate whether a positive obligation exists? The scope of the obligation will vary, having regard to the diversity of situations in Contracting States, the difficulties involved in policing modern societies and the choices which must be made in terms of priorities and resources.

---

<sup>1</sup>. Other Articles of the ECHR may also be engaged such as Article 5 (the right to liberty), Article 6 (the right to a fair hearing), Article 7 (no punishment without law), Article 8 (the right to home and correspondence), Article 11 (the right to freedom of assembly and association) and Article 13 (the right to an effective remedy). For a detailed analysis of these Articles, see the report by Philip Leach on "The principles which can be drawn from the case-law of the European Court of Human Rights relating to the protection and safety of journalists and journalism" MCM(2013)012.

<sup>2</sup>. See, for example, *McCann and Others v. the United Kingdom*, 27 September 1995, § 161, Series A no. 324; and see *Osman v. the United Kingdom*, 28 October 1998, §§ 115-117, Reports of Judgments and Decisions 1998 VIII.

<sup>3</sup>. See *Assenov and Others v. Bulgaria*, 28 October 1998, §102, Reports of Judgments and Decisions 1998 VIII.

<sup>4</sup>. See, among others, *Gaskin v. the United Kingdom*, 7 July 1989, §§ 42-49, Series A no. 160.

<sup>5</sup>. *Özgür Gündem v. Turkey*, no. 23144/93, § 43, ECHR 2000-III.

<sup>6</sup>. See *Plattform "Ärzte für das Leben" v. Austria*, 21 June 1988, § 32, Series A no. 139.

**ARTICLES 2, 3 and 10**  
**THE SAFETY OF JOURNALISTS**

The obligation must not be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities.<sup>7</sup>

***B. Freedom of expression (Article 10)***

*“... Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society..."”*<sup>8</sup>

Freedom of expression, as protected by Article 10 § 1 constitutes an essential basis of a democratic society. The Court has on numerous occasions highlighted the essential role played by the press for ensuring the proper functioning of democracy.<sup>9</sup> Moreover, the Court has frequently stressed the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest, which the public is moreover entitled to receive.<sup>10</sup> Such an undertaking cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor.

Interference by States in the exercise of that freedom is possible; however, it must first of all be prescribed by law (i.e. it must be adequately accessible and reasonably foreseeable in its consequences). Secondly, it must pursue a legitimate aim (i.e. correspond to one of the aims set out in Article 10 § 2). Thirdly, it must be “*necessary in a democratic society*”, that is to say, according to the Court’s case-law, it must correspond to a “*pressing social need*”, be proportionate to the legitimate aim pursued within the meaning of the second paragraph of Article 10, and justified by judicial decisions that give relevant and sufficient reasoning. Under the doctrine of the margin of appreciation, a reference to which will be enshrined in the Preamble to the ECHR as soon as Protocol No. 15 enters into force, States are given certain discretion as to how the ECHR is interpreted at national level. However, that notion of the margin of

---

<sup>7</sup>. See, among other authorities, *Rees v. the United Kingdom*, 17 October 1986, § 37, Series A no. 106; and *Osman v. the United Kingdom*, cited above, § 116.

<sup>8</sup>. *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24.

<sup>9</sup>. See, amongst others, *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103 and *Fressoz and Roire v. France* [GC], no. 29183/95, § 45, ECHR 1999-I.

<sup>10</sup>. See, for example, *mutatis mutandis*, the *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216; and *Informationsverein Lentia and Others v. Austria*, 24 November 1993, § 38, Series A no. 276.

**ARTICLES 2, 3 and 10**  
**THE SAFETY OF JOURNALISTS**

discretion is circumscribed by the interest of a democratic society in enabling the press to exercise its vital role of “public watchdog”.

It is clear from the wording of Article 10 of the Convention that its scope includes the right to receive and impart information. In addition to the substance of information, Article 10 also applies to the various forms and means in which it is transmitted and received, since any restriction imposed on the means necessarily interferes with the right to receive and impart information.<sup>11</sup>

Article 10 can be invoked before the Court not only in vertical relations but also in horizontal relations.<sup>12</sup> A court decision in a conflict between private parties is also considered as a measure of the State.<sup>13</sup>

A positive obligation may also arise under Article 10.<sup>14</sup> This is because the Court recalls the key importance of freedom of expression as one of the preconditions for a functioning democracy and that states must ensure that private individuals can effectively exercise the right of communication between themselves.<sup>15</sup>

In deciding whether a positive obligation under Article 10 exists, regard must be had to the kind of expression rights at stake; their capability to contribute to public debates; the nature and scope of restrictions on expression rights; the ability of alternative venues for expression; and the weight of countervailing rights of others or the public.<sup>16</sup>

The Court has arguably conceded that a positive obligation arises for the State to protect the right to freedom of expression by ensuring a reasonable opportunity to exercise a right of reply and an opportunity to contest a newspaper’s refusal suing for a right to reply in courts.<sup>17</sup>

Moreover, the Court has stressed that States are required to create a favourable environment for participation in public debate by all the persons

---

<sup>11</sup>. See, for example, *Autronic AG v. Switzerland*, 22 May 1990, § 47, Series A no. 178; *De Haes and Gijssels v. Belgium*, 24 February 1997, § 48, Reports of Judgments and Decisions 1997-I; *News Verlags GmbH & Co.KG v. Austria*, no. 31457/96, § 39, ECHR 2000 I.).

<sup>12</sup>. *Fuentes Bobo v. Spain*, no. 39293/98, 29 February 2000.

<sup>13</sup>. See *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 60, 12 September 2011.

<sup>14</sup>. See “Positive obligations on Member States to protect journalist and prevent impunity” on the Court’s website:  
[http://echr.coe.int/Documents/Research\\_report\\_article\\_10\\_ENG.pdf](http://echr.coe.int/Documents/Research_report_article_10_ENG.pdf)

<sup>15</sup>. In the judgment *Editorial Board of Pravoye Delo and Shtekel v. Ukraine* (no. 33014/05, 5 May 2011), the Court, for the first time, acknowledged that Article 10 of the Convention had to be interpreted as imposing on States a positive obligation to create an appropriate regulatory framework to ensure effective protection of journalists’ freedom of expression on the Internet.

<sup>16</sup>. See *Appleby and Others v. the United Kingdom*, no. 44306/98, §§ 42-43 and 47-49, ECHR 2003-VI.

<sup>17</sup>. See *Melnychuk v. Ukraine* (dec.), no. 28743/03, ECHR 2005-IX.

**ARTICLES 2, 3 and 10**  
**THE SAFETY OF JOURNALISTS**

concerned, enabling them to express their opinions and ideas without fear. This is the so-called “enabling environment” for journalism and free media,

« Elle estime aussi que les obligations positives en la matière impliquent, entre autres, que les Etats sont tenus de créer, tout en établissant un système efficace de protection des auteurs ou journalistes, un environnement favorable à la participation aux débats publics de toutes les personnes concernées, leur permettant d’exprimer sans crainte leurs opinions et idées, même si celles-ci vont à l’encontre de celles défendues par les autorités officielles ou par une partie importante de l’opinion publique, voire même sont irritantes ou choquantes pour ces dernières. ».<sup>18</sup>

The concept of positive obligation assumes greater importance in relation to any violence or threats of violence directed by private persons against other private persons, such as the press, exercising free speech.<sup>19</sup> In the case of *Özgür Gündem v. Turkey*, the applicants complained that the newspaper *Özgür Gündem* was forced to cease publication due to the campaign of attacks on journalists and others associated with it, and due to the legal steps taken against the newspaper and its staff. Finding a violation of Article 10 in relation to the attacks on the newspaper and its staff, the Court found that the authorities failed to take steps effectively to investigate, and provide protection against unlawful acts involving violence. In this sense, the authorities failed to comply with their positive obligation to protect the newspaper in the exercise of its freedom of expression.

***C. The duty to protect life (Article 2)***

The Court has reiterated on a number of occasions that Article 2 requires the State not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction.<sup>20</sup> This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. It also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.<sup>21</sup> This is the so-called substantive obligation under Article 2.

Not every claimed risk to life can entail a Convention requirement to take operational measures to prevent that risk from materialising. For a

---

<sup>18</sup>. *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, § 137, 14 September 2010.

<sup>19</sup>. *Özgür Gündem v. Turkey*, no. 23144/93, §§ 42-43, ECHR 2000-III.

<sup>20</sup>. See *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, Reports 1998-III.

<sup>21</sup>. See *Osman v. the United Kingdom*, 28 October 1998, § 115, Reports 1998-VIII, cited in *Kontrová v. Slovakia*, no. 7510/04, §49, ECHR 2007 (extracts).

**ARTICLES 2, 3 and 10**  
**THE SAFETY OF JOURNALISTS**

positive obligation to arise, it must be established that the authorities *knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.*<sup>22</sup>

In the case of *Dink v. Turkey*<sup>23</sup>, the Court found a violation of Article 2. Firat Dink, a Turkish journalist of Armenian origin, was publication director and editor-in-chief of *Agos*, and later murdered by an extreme nationalist. The Court found that the security forces could reasonably be considered to have been informed of the intense hostility towards the journalist in extreme nationalist circles. Furthermore, it appeared that two police departments and one gendarmerie department had been informed of the likelihood of an assassination attempt and even of the identity of the alleged instigators. The threat of an assassination could therefore be said to have been real and imminent. However, none of the three authorities concerned had taken action to prevent the crime. In sum, the latter had not taken the reasonable measures available to them to prevent a real and immediate risk to the journalist's life and were therefore in violation of Article 2. Article 10 was also found to have been breached, not only because of the authorities' failure to protect Firat Dink against attack, but also because he had been found guilty of the crime of denigrating Turkishness.

The obligation to protect life under Article 2 of the Convention, read in conjunction with the State's general duty under Article 1 of the Convention "to secure to everyone within [its] jurisdiction the rights and freedoms defined in [the] Convention", requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force.<sup>24</sup> This is the so-called procedural aspect of Article 2.

In *Gongadze v. Ukraine*<sup>25</sup>, the Court found that there had been a violation of Article 2 following the authorities' failure to protect the life of Georgiy Gongadze. Moreover, the Court considered that during the investigation, the authorities were more preoccupied with proving the lack of involvement of high-level state officials in the case, than discovering the truth about Gongadze's disappearance and death. Accordingly, the Court found a violation of the procedural aspect of Article 2 concerning the failure to conduct an effective investigation into the case.

---

<sup>22</sup>. *Kılıç v. Turkey*, no. 22492/93, § 63, ECHR 2000-III, *Gongadze v. Ukraine*, no. 34056/02, ECHR 2005-XI and *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, § 65, 14 September 2010.

<sup>23</sup>. *Dink v. Turkey*, nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09, 14 September 2010.

<sup>24</sup>. *Kılıç v. Turkey*, no. 22492/93, ECHR 2000 III.

<sup>25</sup>. *Gongadze v. Ukraine*, no. 34056/02, ECHR 2005-XI.

**ARTICLES 2, 3 and 10**  
**THE SAFETY OF JOURNALISTS**

Given the fundamental importance of the right to protection of life, Article 13 (the right to an effective remedy) requires, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible for the deprivation of life and including effective access for the complainant to the investigation procedure.<sup>26</sup>

***D. The prohibition of torture and ill-treatment (Article 3)***

The use of force by state agents, such as police officers, against journalists may violate Article 3. Like Article 2, Article 3 has both a substantive and procedural limb. The Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. Assessment of this minimum level depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.<sup>27</sup> In assessing evidence, the Court adopts the standard of proof “*beyond reasonable doubt*”.

In *Najafli v. Azerbaijan* (no. 2594/07, 2 October 2012), the applicant, a journalist, was beaten with truncheons by the police while reporting on an unauthorised political demonstration which had been organised by opposition parties. The beating occurred during the dispersal of the demonstration, even though, according to the applicant, he had told the police officers he was a reporter. Subsequent to the events in question the applicant was diagnosed with significant injuries. A criminal investigation was opened into how the applicant sustained his injuries but was suspended on the grounds that the officers responsible for his injuries could not be identified. The Court concluded that the use of force against him was unnecessary, excessive and unacceptable.

Where an individual raises an arguable claim that he or she has been ill-treated by the police in breach of Article 3, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention requires by implication that there should be an effective official investigation. This investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.<sup>28</sup> An investigation into allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what

---

<sup>26</sup>. *Kılıç v. Turkey*, no. 22492/93, ECHR 2000 III.

<sup>27</sup>. *Najafli v. Azerbaijan*, no. 2594/07, 2 October 2012

<sup>28</sup>. *Rizvanov v. Azerbaijan*, no. 31805/06, § 55, 17 April 2012.

**ARTICLES 2, 3 and 10**  
**THE SAFETY OF JOURNALISTS**

happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions.<sup>29</sup>

---

<sup>29</sup>. *Rizvanov v. Azerbaijan*, no. 31805/06, § 56, 17 April 2012.