IN THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

CASE NO. №1244/15-01/2019

By the appeal of attorney-at-law Sarkis Darbinyan acting on behalf of SOVA Center for Information and Analysis (SOVA) with respect to its challenge of Law No. 149-FZ "About information" regulating "the right to be forgotten"

EXPERT OPINION BY ARTICLE 19

Introduction

1. This expert opinion is submitted by ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19), an independent human rights organisation that works around the world to protect and promote the rights to freedom of expression and information. It takes its name and mandate from Article 19 of the Universal Declaration of Human Rights which guarantees the right to freedom of expression. ARTICLE 19 has produced a number of standard-setting documents and policy briefs based on international and comparative law and best practice on issues concerning the rights to freedom of expression. It also regularly intervenes in domestic and regional human rights court cases, and comments on legislative proposals, as well as existing laws that affect the right to freedom of expression. This work frequently leads to substantial improvements to proposed domestic legislation.

2. ARTICLE 19 was asked by the complainant organisation - SOVA Center for Information and Analysis (SOVA) – to provide an expert opinion in the present case and to examine the compatibility of the Russian legislation on delisting or de-referencing, also known as 'the right to be forgotten', with international freedom of expression standards. The term 'the right to be forgotten' refers to a remedy which in some circumstances enables individuals to demand that search engines de-list information about them which appears following a search for their name.[1]

3. ARTICLE 19 is uniquely positioned to provide guidance on relationship of 'the right to be forgotten' with the right to freedom of expression due to extensive legal and policy work on the subject. This includes publishing a policy brief The "Right to be Forgotten": Remembering Freedom of Expression in 2016,[2] interventions to national and regional courts in cases interpreting the scope of the 'right to be de-listed[3] and legal analysis of relevant legislation, including the Russian "Right to be Forgotten" Law.[4]

---

[1] 'The right to be forgotten' is not recognised under any international human rights constitutions or national constitutions. ARTICLE 19 does not advocate for its recognition in domestic or international standards.

[2] ARTICLE 19, The "Right to be Forgotten": Remembering Freedom of Expression, March 2016, available at https://bit.ly/2Y3Rfbt.

[3] See ARTICLE 19 and Others, submission to the French Conseil d'Etat, November 2015, available at https://bit.ly/2TUNlT8; ARTICLE 19 and Others, submission to the CJEU in Google v. CNIL, November 2017, available at https://bit.ly/2FkEqBd; and ARTICLE 19 and others, amicus brief to the Supreme Court of Canada in *Google Inc vs Equustek Solutions Inc*, October 2016, available at https://bit.ly/2W2Kvc0.

[4] ARTICLE 19, Russia: The "Right to be Forgotten" Bill, August 2015, available at https://bit.ly/2Hu77zt.

4. In this opinion, ARTICLE 19 concludes that the relevant legislation,[5] namely Article 10.3 of the Federal Law of July 27, 2006 No. 149-03,[6] Article 1.3 of the Federal Law of July 13, 2016 No. 264-03, and Articles 29 and 402 of the Civil Procedure Code, do not comply with international and European standards on freedom of expression and contravene the constitutional protection of the right to freedom of expression. We argue that since the Russian Federation is a signatory to, and has ratified, the International Covenant on Civil and Political Rights (the ICCPR) and the European Convention on Human Rights (the European Convention), the Constitutional Court is required to take into account international and European human rights law in the present case, including international and European standards on the protection of the right to freedom of expression in the context of 'the right to be de-referenced.'

5. The submission focuses on the following issues:

   - First, ARTICLE 19 provides an overview of applicable human rights standards on freedom of expression and privacy as they apply to the 'right to be de-listed' and as they should be considered in the present case.

   - Second, ARTICLE 19 analyses the impugned provisions of the Law to determine their compliance with these standards.

Applicable international human rights standards

6. The explanatory note for the Law states that it is consistent with "general European practice."[7] It is therefore important that the Constitutional Court considers relevant European and international standards when examining the present case.

Protection of freedom of expression under international and Russian constitutional law

7. The right to freedom of expression is enshrined in Article 19 of the ICCPR[8] and Article 10 of the European Convention.[9] As a signatory to these treaties, Russia is required to enact legislation to give domestic effect to their provisions and to bring domestic laws into line with the ICCPR and the European Convention.

8. The right to freedom of expression is also protected by Article 29 of the Constitution of the Russian Federation (the Constitution). Importantly, under the Constitution, international treaties to which Russia is party, as well as recognised principles and standards of international law, are a component part of its legal system and have precedence over domestic legislation.[10] The Constitution further provides that the individual, and individual

[5] For expediency, this expert opinion will refer to these articles collectively as the "Law."
[6] Federal Law No. 149-FZ of July 27, 2006, on Information, Information Technologies and Protection of Information (as amended up to Federal Law No. 222-FZ of July 21, 2014.
[7] Explanatory note to the draft of Federal Law No. 149-FZ Articles and Sections 29 and 402 of the Civil Procedure Code of the Russian Federation.
[8] International Covenant on Civil and Political Rights, adopted by UN General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976. Russia ratified the ICCPR on 16 October 1973.
[9] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5. Russia ratified the ECHR on 5 May 1998.
[10] Article 15, para 4 of the Constitution.

rights and freedoms, are supreme values;[11] and that the State is required to acknowledge, uphold and protect human and civil rights and freedoms.[12]

9. Freedom of expression protects the free flow of information. It applies to all media without borders. It includes the right to impart, as well as to receive information. It has consistently been described as "a necessary condition for the realization of the principles of transparency and accountability that are, in turn, essential for the promotion and protection of human rights."[13] Access to, and use of, the Internet has been recognised as a fundamental aspect of freedom of expression.[14] In General Comment No. 34, the UN Human Rights Committee, the treaty body responsible for the progressive interpretation of the ICCPR, confirmed that Article 19 of the ICCPR protects all forms of expression and the means of their dissemination, including all forms of electronic and Internet-based modes of expression.[15] It stated that:

> Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3.[16] [Emphasis added]

10. Under international law, the right to freedom of expression is not an absolute right and may be legitimately restricted by the State in certain circumstances. A three-part test sets out the conditions against which any proposed restriction must be scrutinised:

    - The restriction must be provided by law: it must have a basis in law, which is publicly available and accessible, and formulated with sufficient precision to enable citizens to regulate their conduct accordingly. [17]

    - The restriction must pursue a legitimate aim, exhaustively enumerated in Article 10 para 2 of the European Convention and Article 19 para 3 of the ICCPR, namely: national security, territorial integrity or public safety, the prevention of disorder or crime, the protection of health or morals, and/or the protection of the reputation or rights of others. Article 10 para 2 of the European Convention also states that preventing the disclosure of information received in confidence, or maintaining the authority and impartiality of the judiciary, is a legitimate aim.

    - The restriction must be necessary in a democratic society, meaning that it must be necessary and proportional. This entails an assessment of whether the proposed limitation satisfies a "pressing social need" and whether the measure is the least restrictive way to achieve the aim.

Protection of privacy under international and Russian constitutional law

11. The right to privacy is enshrined in Article 17 of the ICCPR and Article 8 of the European Convention, as well as in Articles 23-25 of the Constitution. Whereas the concept of privacy

[11] Article 2 of the Constitution.
[12] Article 46(1) of the Constitution.
[13] UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, paras 2-3.
[14] See e.g. the 2017 report of the UN Special Rapporteur on Freedom of Expression and Freedom of Opinion (Special Rapporteur on FOE), A/HRC/35/22, 30 March 2017, para. 76.
[15] General Comment No. 34, *op.cit.*, para 12.
[16] *Ibid*, para 43 [emphasis added].
[17] General Comment No 34 at paras 24-25; See also European Court of Human Rights, *The Sunday Times v United Kingdom*, App. No. 6538/74, 26 April 1979, para 49.

might be difficult to concisely and objectively define since it encompasses many aspects, applications and cultural meanings, the right to privacy is comprehensively defined as the right to be free from unlawful or arbitrary interference with one's privacy, family, home or correspondence, and from unlawful attacks on one's reputation, as well as the right to enjoy the protection of the law against such interference or attacks. Privacy protects individual autonomy and the relationship between the individual and society, including government, companies, and private individuals.[18] It underpins human dignity and other fundamental values, including freedom of expression.[19]

12. Limitations of the right to privacy are subject to the same three-part test as for freedom of expression: legality, necessity, and proportionality.[20]

Balancing the rights to freedom of expression and privacy

13. The rights to freedom of expression and privacy are both mutually reinforcing and at times conflicting rights. This conflict can be particularly challenging to manage when the information at issue is both personal and public.[21] International human rights law does not prescribe an explicit test for balancing two rights; only that national courts must strike "a fair balance" between the rights of freedom of expression and privacy where the two rights conflict.[22] The European Court of Human Rights (the European Court) has stated that **the European Convention "does not establish any** *a priori* hierarchy between these rights…as a matter of principle, they deserve equal respect. They must therefore be balanced against each other."[23]

14. In recent years, the European Court has articulated a number of factors to take into consideration when balancing the rights to freedom of expression and privacy. This jurisprudence, however, has primarily developed with respect to cases that (1) concern publication in the print or broadcast media; and (2) have arisen in the context of adjudication of measures imposed by State courts faced with violations of Article 8 (for example when State courts have imposed an injunction to prevent the publication of paparazzi photographs). As such, the European Court's jurisprudence analyses the positive obligations of States to protect Article 8 by taking measures (including by remedying harms occasioned), rather than the State's negative obligation to ensure that public authorities do not act in a way that interferes with the right. The European Court identified the following non-exhaustive list of relevant factors to assist in balancing these rights: [24]

---

[18] See David Banisar, The Right to Information and Privacy: Balancing Rights and Managing Conflicts, World Bank Institute, Governance Working Paper Series, 2011.

[19] See e.g. HR Committee, CCPR General Comment No. 16 on Article 17 (Right to Privacy), The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation, 8 April 1988; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, A/HRC/13/37, 28 December 2009; European Court, *Bensaid v the UK*, App. No. 44599/98 6 February 2001.

[20] See Article 8 of the European Convention. Although Article 17 of the ICCPR does not specifically prescribe a test for permissible limitations on the right, the same tripartite test applies to privacy as it does to freedom of expression. In its Concluding Observations of its 2014 review of the USA's compliance with its obligations under Article 17 of the ICCPR, the Committee noted that interferences with the right to privacy must comply "with the principles of legality, necessity and proportionality;" CCPR/C/USA/CO/4, para 22. See also the Special Rapporteur on FoE in his 2013 report on privacy and communications surveillance, A/HRC/27/37, para 23.

[21] See, e.g., European Court*, Karaahmed v Bulgaria*, App. No. 30587/13, 24 February 2015, para 92; *Von Hannover v German (No. 2)*, [GC] No. 40660/08 & 60641/08, 7 February 2012, para 106.

[22] See e.g. European Court, *MGN Limited v UK*, App. No. 39401/04, 18 January 2011, para 142.

[23] *Ibid.*, *Karaahmed v Bulgaria*, para 95.

[24] See, e.g. the European Court, *Von Hannover v German (No. 2)*, *op.cit.*; *Tønsbergs Blad A.S. and Haukom v. Norway*, App. No. 510/04, 1 March 2007; *Bj¨rk Eiðsdóttir v. Iceland*, App. no. 46443/09, 10 July 2012; *Erla Hlynsdóttir v. Iceland*, App. No. 43380/10, 10 July 2012; *Éditions Plon v. France*, App. No. 58148/00, ECHR 2004-IV; *Ojala and Etukeno Oy v. Finland*, App. No. 69939/10, 14 January 2014; *Couderc and Hachette Filipacchi*

- The contribution to a debate of public interest;
- The degree of notoriety of the person affected;
- The subject of the report and nature of the information;
- The prior conduct of the person concerned;
- The method of obtaining the information;
- The content, form, and consequences of the publication; and
- The circumstances in which photos were taken (where applicable).

15. Additionally, ARTICLE 19 in its policy brief on the 'right to be forgotten' made the following suggestions about the compatibility of these provisions with international standards:[25]

- Any "right to be forgotten" should be strictly limited, as certain minimum requirements must be met for such a right to be compatible with the right to freedom of expression, both in terms of substance and procedure. Specifically, the "right to be forgotten" should be limited to private individuals and should be actionable only against search engines (as data controllers), rather than actionable against hosting services or content providers. Any protections should also make explicit reference to the right to freedom of expression as a fundamental right with which such protections must be balanced.

- Decisions on "right to be forgotten" requests should only be issued by courts or independent adjudicatory bodies.

- A strict seven-part test for balancing the right to freedom of expression and the "right to be forgotten" should be applied, taking into consideration:
  - Whether the information in question is of a private nature;
  - Whether the applicant had a reasonable expectation of privacy, including the consideration of issues such as prior conduct, consent to publication or prior existence of the information in the public domain;
  - Whether the information at issue is in the public interest;
  - Whether the information at issue pertains to a public figure;
  - Whether the information is part of the public record;
  - Whether the applicant has demonstrated substantial harm;
  - How recent the information is and whether it retains public interest value.

- Minimum procedural requirements should be observed, including
  - Only courts or independent adjudicatory bodies should decide whether "right to be forgotten" requests should be upheld;
  - Data publishers should be notified of "right to be forgotten" requests and should be able to challenge these requests;
  - De-listings should be limited in scope, including geographically;

- Relevant service providers, public authorities and courts should all publish transparency reports on requests to exercise the 'right to be forgotten.'

Associes v France, ECHR 992, 10 November 2015; *Standard Verlags GmbH v. Austria (no.2)*, App. No. 21277/05, 4 June 2009; *Mosley v UK*, App. No.48009/08, 10 May 2011; *Verlagsgruppe News GmbH v. Austria (no. 2)*, App. No. 10520/02, 14 December 2006; Roberts v. UK, App. No. 38681/08, 5 July 2011; *Satakunnan Markkinaporssi Oy and Satamedia Oy v Finland*, App. No. 931/13, 21 July 2015; Axel Springer v Germany, [GC], App. No. 39954/08, 07 February 2012; or *Egeland and Hanseid v. Norway*, App. No. 34438/04, 16 April 2009. *Haldimann and Others v Switzerland*, App. No. 21830/09, 24 February 2015.

[25] ARTICLE 19, The "Right to be Forgotten" brief, *op.cit.*

International case law on the 'right to be forgotten'

16. There are certain recognised aspects of the 'right to be forgotten' in criminal and civil law, including for example the expunging of criminal records, and statutes of limitations.[26]

17. The 'right to be forgotten' initially came to the fore with the decision of the Court of Justice of the European Union (the CJEU) in *Google Spain,*[27] which held that data protection principles apply to the publication search results of search engines. The CJEU held that individuals should be able to ask search engines operating in the EU to de-list search results obtained by a search for their name if the links were "inadequate, irrelevant or no longer relevant, or excessive." Since then, the Article 29 Working Party and Google's Advisory Council have published guidelines on the way in which 'right to be forgotten' requests should be treated. The Article 29 Guidelines state that there is an exception to not delist pages "for particular reasons, such as the role played by the data subject in public life," such that the data processing is justified by "the preponderant interest of the general public in having, on account of inclusion in the list of results, access to the information in question."[28] Google's Advisory Council also recognised an exception for "information related to criminal activity", stating that the "severity of the crime, the role played by the requestor in the criminal activity, the recency and the source of the information", as well as public interest, are relevant factors to consider. In particular, information about human rights violations or crimes against humanity should weigh against delisting.[29]

18. International standards suggest that a specific law on the right to be forgotten is not only unnecessary, but may also unduly restrict freedom of expression. While there may be legitimate instances where an individual will seek to remove access to information about them which is either of a private nature (e.g. bank details, medical information, or phone number), defamatory or libellous, individuals can rely on existing remedies. In most cases, individuals should apply directly to the courts, which are best placed to decide whether the information should remain available.[30] Indeed, several domestic courts within the EU have handed down judgments on the topic, highlighting the importance of protecting the right to freedom of expression.[31] Importantly, in June 2018, the European Court held that Germany had correctly denied two individuals their "right to be forgotten" requests in connection with press archives relating to a 1991 murder.[32]

The Law is incompatible with international human rights standards

19. ARTICLE 19 submits that the Law must comply with the aforementioned international and European standards, both in terms of substance and procedure. This section reviews the compatibility of the Law with these standards.

---

[26] *Ibid.*
[27] CJEU, *Google Spain v AEPD & Mario Costeja Gonzalez*, 13 May 2014, C-131-12. ECLI:EU:C:2014:317.
[28] Article 29, Working Party, Guidelines on the implementation of the Court of Justice of the European Union judgment on "Google Spain" Costeja Gonzalez" c-131/121, available at https://bit.ly/2FmiQNT.
[29] The Advisory Council to Google on the Right to be Forgotten, Final Report, pp. 11-12; available at https://bit.ly/2uhsxa1.
[30] *C.f.* ARTICLE 19, "Right to Be Forgotten" brief, *op.cit.,* p. 19.
[31] See e.g. Court of Amsterdam decision, C/13/569654, 18 September 2014; *Amsterdam Court, Rechtbank Amsterdam,* 13 February 2015, [eiser] tegen Google Inc., *[plaintiff] v. Google Inc.,* ECLI:NL:RBAMS:2015:716; Regional court of Toulouse (under the urgent procedure), TGI de Toulouse (ord. réf.), 21 January 2015 - Franck J. c/ Google France et Google Inc., 21 January 2015.
[32] European Court, ML and WW v Germany, App. Nos. 60798/10 and 65599/10, 28 June 2018.

Restrictions are disproportionate to aim pursued

20. The present case challenges provisions of the Law which require search engine operators falling within the scope of the Law to "stop providing links to the website pages on the Internet network allowing access to information about an applicant which is distributed in violation of the legislation of the Russian Federation, is inaccurate and dated, [or] which has lost meaning for the application by virtue of any subsequent events or actions taken by the applicant. The only exception from de-listing requests applies to materials containing "information about events containing elements of criminally punishable acts in respect of which the periods of limitation for bringing a prosecution have not expired, or information about citizens having committed an offence in respect of which the conviction has not been quashed or been removed from official records."

21. As noted above, under the three part test, the restriction on freedom of expression must be proportionate to the aim pursued. The Law does not meet this standard for the following key reasons:

- Whether personal information is 'relevant' is an unduly broad yardstick against which to decide whether information should remain genuinely accessible. In particular, it assumes that personal information is only relevant in the eye of the person making the 'right to be forgotten' application. However, information about a person may be both personal and public - it may be relevant to the person seeking the information, and may be relevant insofar as it concerns a matter of public interest. In other words, there is no such thing as an *objective* conception of relevance. In requiring search engines to determine the 'relevance' of information, lawmakers and courts set search engines an impossible task.

- The Law entirely fails to make reference to the right to freedom of expression as an important right that must be balanced with the right to privacy and protection of personal data during the examination of 'right to be forgotten' requests.

- The Law fails to include an overarching presumption that information already legitimately in the public domain shall remain in the public domain except where it has demonstrably caused serious harm to the person concerned; and a broad exception for personal information in the public interest and/or concerning public figures.[33]

  The exception that search engines are not required to delist links concerning allegations of criminality or information about convictions, which have not been expunged or quashed, is too narrow to cover cases where the criminal record of the concerned individual has been expunged but there remains a clear public interest in having access to the information. In the present instance, the complainant does not know on what basis the request for de-listing was made. However, based on the content of the webpages at issue it appears that an individual whose criminal convictions for hate crimes were mentioned in both pages may have made the request.

- The action required by the search engine is unclear. In particular, it is unclear whether search engines are required to remove the links at issue entirely or whether they must delist search results generated on the basis of a person's name. ARTICLE 19 believes

[33] ARTICLE 19, The "Right to be Forgotten" brief , *op. cit.*, pp. 15-16.

that any law providing for a "right to be forgotten" should be limited to a right to de-list search results generated on the basis of a search for a person's name

The Law lacks important procedural safeguards

22. The Law is equally missing important procedural safeguards:

    (1) the right of linked-to sites to be notified that a 'right to be forgotten' request has been made in respect of their content; and

    (2) a requirement that search engines publish transparency reports containing sufficiently detailed info about the nature, volume and outcome of 'right to be forgotten requests.'

23. In the present case, Google proactively notified the complainant of the request to delist the web addresses at issue. Under the requirements of the Law, there was no obligation on the search engine to notify any party of the change. In other instances, therefore, webpages may be delisted without anyone having the opportunity to contest the decision. On the contrary, search engine operators are prohibited by the Law from disclosing any information pertaining to the applicant's request. ARTICLE 19 submits that this constitutes a disproportionate restriction on the right to freedom of expression of linked-to sites and a breach of their rights to a fair trial and to an effective remedy.

24. At a minimum, the Law should provide a right for linked-to sites to be notified and given an opportunity to intervene in cases being challenged by search engines before the courts. Furthermore, the Law should require search engines to publish sufficiently detailed information about the nature, volume, and outcome of de-listing requests to ensure accountability regarding the way in which search engines apply the Law.[34]

Applicability of the Law and state sovereignty

25. ARTICLE 19 notes that the Law is particularly far-reaching since it will apply to any search operator "who places advertisements on the Internet network aimed at attracting the attention of consumers located on the territory of the Russian Federation." The Law is therefore clearly intended to apply beyond Russian search engines to Google and other search engine operators that are based – and may collect the personal data of Russian nationals from - outside the Russian Federation. Instead, the applicability of the Law should be limited to operators having a branch of subsidiary established in the Russian Federation.

26. In this case, SOVA operates a website under .ru, the Internet country code top-level domain (ccTLD) for the Russian Federation. However, it may be accessed by Russian-speaking users from outside the geographic territory of the Russian Federation. Furthermore, SOVA's website is available in both Russian and English, meaning that Internet users worldwide are able to access its content.

27. By requiring search engines to alter the contents of search results available to users that could potentially be located in other countries, thereby impacting their freedom of the expression, the Law also violates the principle of state sovereignty under international law.

[34] ARTICLE 19, The "Right to be Forgotten" brief, *op.cit.*, p. 17.

28. ARTICLE 19 notes that domestic courts must commence from the basic premise that their jurisdiction is generally limited to their geographic territory, and that their orders must not interfere with the human rights of individuals in other countries.[35] The Charter of the United Nations is based on the principle of "sovereign equality of all its Members",[36] and under the European Convention, a state's jurisdiction is generally limited to its geographic territory.[37] The principles of comity and reciprocity suggest that the Law should not be used to impose global restrictions on freedom of expression through *ad hoc* remedies grounded exclusively in domestic law, without regard to international norms, laws, or policies. Otherwise, any country could potentially assert jurisdiction over a search engine in order to restrict access to information all over the world.

Conclusion

On the basis of the foregoing, ARTICLE 19 submits that although the Law seeks to replicate the limited 'right to be forgotten' recognised by the CJEU in *Google Spain*, it does it without the safeguards necessary to protect freedom of expression identified in subsequent international standards. In particular, there should be exceptions for personal information that is in the public interest and/or concerns public figures. Furthermore, the Law lacks critical procedural safeguards, including the right of linked-to sites to be notified that a request for delisting has been made regarding their content, and a requirement that search engines publish transparency reports containing sufficiently detailed information about the nature, volume and outcome of requests. Finally, the Law is overly broad because it requires search engines to potentially take action in relation to any domain name on the Internet, rather than limiting its scope to .ru domain names.

29. Hence, ARTICLE 19 respectfully submits that Law fails to comply with the obligations of the Russian Federation with international and European freedom of expression standards and guarantees of freedom of expression in the Russian Constitution. We respectfully invite the Court to take this opportunity to reaffirm its commitment to these principles.

March 2019

Paige Morrow
Senior Legal Officer
ARTICLE 19: Global Campaign for Freedom of Expression

[35] Recommendation CM/Rec(2015)6 of the Committee of Ministers to member States on the free, transboundary flow of information on the Internet, 1 April 2015, paras 3-5.
[36] Charter of the United Nations, 26 June 1945, Can TS 1945 No 7, Article 2.
[37] See e.g. *Ben El Mahi and Others v Denmark,* (ECJ) No 5853/06 (11 December 2006), paras 7-8; Recommendation CM/Rec(2015)6*, op.cit.,* para 5 which states: "There is a need to promote a common international understanding, to consolidate norms and adhere to best practices on the free, transboundary flow of information on the Internet, while ensuring full compliance with international agreements…This includes State responsibility to ensure that actions within its jurisdiction do not interfere illegitimately with access to information in other States or negatively impact the transboundary flow of information on the Internet."