Committee of Ministers: Recommendation on the Protection and Promotion of the Universality, Integrity and Openness of the Internet

IRIS 2011-10:1/5

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On 21 September 2011, the Committee of Ministers adopted Recommendation CM/Rec(2011)8 on 'the protection and promotion of the universality, integrity and openness of the Internet.' In the recommendation, the Ministers explicitly connect the resilience and stability of the Internet with freedom of expression and access to information (para. 2-6). Furthermore, the Recommendation acknowledges the interdependence of member states on each others' actions and legal systems for the proper functioning of the Internet and its infrastructure. Thus, it ambitiously calls upon states to cooperate and assist each other - "in good faith" (Arts. 1.2 and 2.2.4) - in avoiding a transboundary impact on access to and use of the Internet. This unanimous political ambition makes sense and, even though recommendations are not legally binding, could set the standard for future policy-making in the field of network security and resilience.

The explicit connection of Art. 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) to the access to and use of the Internet, and the stability and resilience of the Internet in particular (paras. 4-5), is in line with the standard jurisprudence of the European Court of Human Rights. In its ruling on Autronic AG v Switzerland, and more recently in Saygili v Turkey, the Court had already extended the protection of Art. 10 ECHR to "the means of transmission or reception, since any restriction imposed on the means necessarily interferes with the right to receive and impart information." Now that member states are recommended to actively ensure stability and resilience on the Net, and observe the public's general interest in freedom of expression in internet policy-making (para. 9), it will be interesting to see whether the Court will continue along the path towards reaching legally-binding positive obligations related to network security under Art. 10 ECHR in future judgments. Indeed, the Court increasingly observes recommendations in the "Relevant International Instruments" section of its judgments.

As for now, the recommendation lays out general principles that states should observe in their interactions within the field of internet policy-making, such as i) no-harm; ii) co-operation; iii) due diligence in preventing, managing and responding to transboundary disruptions and interferences; iv) preparedness; v) notification; vi) information sharing, and vii) mutual assistance. Along with these principles, member states are also recommended to be guided by a Declaration

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adopted by the Council on the same date, on 10 principles for Internet Governance (para. 12) (see IRIS 2011-10/7).

Recommendation CM/Rec(2011)8 of the Committee of Ministers to member states on the protection and promotion of the universality, integrity and openness of the Internet, 21 September 2011

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