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Protection of journalistic sources

Article 10 (freedom of expression) of the European Convention on Human Rights

The European Court of Human Rights has repeatedly emphasised that Article 10 of the European Convention on Human Rights safeguards not only the substance and contents of information and ideas, but also the means of transmitting it. The press has been accorded the broadest scope of protection in the Court's case law, including with regard to confidentiality of journalistic sources.

"Protection of journalistic sources is one of the basic conditions for press freedom. ... 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 be adversely affected. ... [A]n order of source disclosure ... cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest." (*Goodwin v. the United Kingdom*, judgment of 27 March 1996, § 39).

Journalists obliged to disclose journalistic sources / Alleged failure to protect journalistic sources

Goodwin v. the United Kingdom

27 March 1996

This case concerned a disclosure order imposed on a journalist (working for *The Engineer*) requiring him to reveal the identity of his source of information on a company's confidential corporate plan.

There was not, in the European Court of Human Rights' view, a reasonable relationship of proportionality between the legitimate aim pursued by the disclosure order and the means deployed to achieve that aim. Both the order requiring the applicant to reveal his source and the fine imposed upon him for having refused to do so gave rise to a **violation of** his right to freedom of expression under **Article 10** of the European Convention on Human Rights.

Nordisk Film & TV A/S v. Denmark

8 December 2005 (decision on the admissibility)

This case concerned an order to disclose research material obtained by a journalist who, making a documentary on paedophilia in Denmark, went undercover and became involved in a paedophile association.

The Court declared the application **inadmissible** as manifestly ill-founded. It found in particular that the domestic court's order had been a proportionate interference with the journalist's freedom of expression that was justifiable for the prevention of crime, notably with regard to a serious child abuse case.

Voskuil v. the Netherlands

22 November 2007

The applicant, a journalist, was denied the right not to disclose his source for two articles he had written for a newspaper concerning a criminal investigation into arms trafficking, and detained for more than two weeks in an attempt to compel him to do so.

The Court, finding in particular that the Dutch Government's interest in knowing the identity of the applicant's source had not been sufficient to override the applicant's interest in concealing it, held that there had been a **violation of Article 10** of the Convention. It further held that there had also been a **violation of Article 5 § 1** (right to liberty and security) of the Convention in the applicant's case.

Financial Times Ltd and Others v. the United Kingdom

15 December 2009

This case concerned the complaint by four United Kingdom newspapers and a news agency that they had been ordered to disclose documents to *Interbrew*, a Belgian brewing company, which could lead to the identification of journalistic sources at the origin of a leak to the press about a takeover bid.

The Court held that there had been a **violation of Article 10** of the Convention. Emphasising in particular the chilling effect arising whenever journalists were seen to assist in the identification of anonymous sources, it found that the interests in eliminating damage through the future dissemination of confidential information and in obtaining damages for past breaches of confidence were, even if considered cumulatively, insufficient to outweigh the public interest in the protection of journalists' sources.

Sanoma Uitgevers B.V. v. the Netherlands

14 September 2010 (Grand Chamber)

This case concerned photographs, to be used for an article on illegal car racing, which a Dutch magazine publishing company was compelled to hand over to police investigating another crime, despite the journalists' strong objections to being forced to divulge material capable of identifying confidential sources.

The Court found in particular that the interference with the applicant company's freedom of expression had not been "prescribed by law", there having been no procedure with adequate legal safeguards available to the applicant company to enable an independent assessment as to whether the interest of the criminal investigation overrode the public interest in the protection of journalistic sources. There had therefore been a **violation of Article 10** of the Convention.

Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands

22 November 2012

The applicants – a limited liability company incorporated under Netherlands law, publisher of the mass-circulation daily newspaper *De Telegraaf*, and two journalists – complained about the order to surrender documents which could identify journalistic sources and about the use of special powers by the State.

The Court held that there had been a **violation of Articles 8** (right to respect for private life) **and 10** of the Convention in respect of the two journalists, finding in particular that the relevant law in the Netherlands had not provided appropriate safeguards in respect of the powers of surveillance used against them, with a view to discovering their journalistic sources. The Court further held that there had been a **violation of Article 10** as regards the order for the surrender of documents addressed to the publishing company. It restated in particular the importance of journalistic sources' protection for press freedom in a democratic society and the potentially chilling effect an order of source disclosure could have on the exercise of that freedom and found that the need to identify the secret services official(s) who had supplied the secret documents to the applicants had not justified the order to surrender documents.

Searches of journalists' home or workplace and/or seizure of journalistic material

In both cases below the Court held that the national authorities had to establish that measures other than searches of journalists' home and workplace and seizure of material, such as the interrogation of appropriate officials, would not have been effective in preventing disorder or crime.

Roemen and Schmitt v. Luxembourg

25 February 2003

The applicants in this case were a journalist and his lawyer in the domestic proceedings. The case concerned an unannounced raid and search by the police of the first applicant's home following the publication of an article concerning tax fraud by a government minister. Investigators armed with search warrants carried out extensive investigations. The investigating judge had also ordered a search of the first applicant's lawyer's office.

Considering that the Government had not shown that the balance between the interests at stake, namely the protection of sources on the one hand and the prevention and punishment of crime on the other, had been preserved, the Court held that the measures in issue had been disproportionate and had infringed the first applicant's right to freedom of expression. There had therefore been a **violation of Article 10** of the Convention in respect of the first applicant. The Court further found that the search carried out at the first applicant's lawyer's office had had repercussions on the first applicant's rights under Article 10 of the Convention. Holding that the search of the second applicant's office had been disproportionate to the aim pursued, particularly in view of the rapidity with which it had been carried out, the Court accordingly concluded that there had been a **violation of Article 8** (right to respect for home) of the Convention in respect of the second applicant.

Ernst and Others v. Belgium

15 July 2003

The applicants in this case were four journalists. The case concerned searches of Belgian newspapers' offices and the four journalists' homes by the Serious Crimes Squad in connection with the prosecution of members of the State legal service at the Liège Court of Appeal for breach of confidence following leaks in highly sensitive criminal cases.

The Court held that there had been a **violation of Article 10** of the Convention. It found in particular that the reasons given by the domestic courts had not been sufficient to justify searches and seizures on such a large scale. In this case the Court further held that there had been a violation of Article 8 (right to respect for private life), no violation of Article 6 § 1 (right to a fair hearing), no violation of Article 14 (prohibition of discrimination) taken together with Article 6 § 1 and no violation of Article 13 (right to an effective remedy) of the Convention.

Tillack v. Belgium

27 November 2007

The applicant, a journalist of the German weekly magazine *Stern*, complained about searches and seizures at his home and his place of work following the publication of articles concerning irregularities in the European institutions and based on information from confidential documents from the European Anti-Fraud Office.

The Court held that there had been a **violation of Article 10** of the Convention. It emphasised in particular that a journalist's right not to reveal her or his sources could not be considered a mere privilege to be granted or taken away depending on the lawfulness or unlawfulness of their sources, but was part and parcel of the right to information. It found the reasons given by the Belgian courts to justify the searches insufficient.

Martin and Others v. France

12 April 2012

This case concerned a search of the premises of the *Midi Libre* daily newspaper ordered by an investigating judge to determine in what circumstances and conditions journalists had obtained a copy of a confidential draft report of the Regional Audit Office concerning the management of the Languedoc-Roussillon region.

The Court held that there had been a **violation of Article 10** of the Convention. In particular, the French Government had not demonstrated that the competing interests – namely the protection of journalists' sources and the prevention and repression of crime – had been properly balanced. The reasons given by the authorities to justify the search could be considered relevant, but not sufficient. The search had accordingly been disproportionate.

Ressiot and Others v. France

28 June 2012

This case concerned investigations carried out at the premises of *L'Equipe* and *Le Point* newspapers and at the homes of journalists accused of breaching the confidentiality of a judicial investigation. The authorities wanted to identify the source of the leaks in an investigation into possible doping in cycle racing.

The Court held that there had been a **violation of Article 10** of the Convention. It found in particular that the French Government had not shown that a fair balance had been struck between the various interests involved. The measures taken had not been reasonably proportionate to the legitimate aim pursued, having regard to the interest of a democratic society in ensuring and maintaining the freedom of the press.

Saint-Paul Luxembourg S.A. v. Luxembourg

18 April 2013

This case concerned a search and seizure warrant issued by an investigating judge against a newspaper after the latter had published an article which was the subject of a complaint to the judicial authorities by an individual mentioned in the article and his employer.

The Court found a **violation of Article 8** (right to respect for private life) and a **violation of Article 10** of the Convention. It held in particular that the search and seizure warrant had not been reasonably proportionate to the aim pursued, namely to verify the identity of the journalist who had written the article, and that it had been insufficiently limited in scope to prevent possible abuse by the investigating officers, for instance in the form of attempts to identify the journalist's sources.

Nagla v. Latvia

16 July 2013

This case concerned the search by the police of a well-known broadcast journalist's home, and their seizure of data storage devices. Her home was searched following a broadcast she had aired in February 2010 informing the public of an information leak from the State Revenue Service database.

The Court held that there had been a **violation of Article 10** of the Convention. It emphasised in particular that the right of journalist's not to disclose their sources could not be considered a privilege, dependent on the lawfulness or unlawfulness of their sources, but rather as an intrinsic part of the right to information that should be treated with the utmost caution. In this case the investigating authorities had failed to properly balance the interest of the investigation in securing evidence against the public interest in protecting the journalist's freedom of expression.

Stichting Ostade Blade v. the Netherlands

27 May 2014 (decision on the admissibility)

This case concerned the search of a magazine's premises following a press release it issued announcing that it had received a letter from an organisation claiming responsibility for a series of bomb attacks in Arnhem. The publisher of the magazine

complained in particular that the search had amounted to a violation of its right to protect its journalistic sources.

The Court declared the application **inadmissible** as manifestly ill-founded. It concluded that “source protection” was not in issue in this case as the magazine’s informant, who was seeking publicity for the attacks under cover of the press, was not entitled to the same protection as ordinarily accorded to “sources”. The search, which had been carried out in order to investigate a serious crime and prevent further attacks, had therefore complied with the requirements under Article 10 of the Convention, notably of being necessary in a democratic society for the prevention of crime.

Görmüş and Others v. Turkey

19 January 2016

In April 2007 the *Nokta* weekly magazine published an article based on documents classified “confidential” by the Chief of Staff of the armed forces. The applicants – respectively, at the relevant time, the publishing director and editors-in-chief of the weekly magazine as well as investigative journalists who worked for the publication – complained that the measures taken by the relevant authorities, particularly the search of their professional premises and the seizure of their documents, had been intended to identify their sources of information and infringed their right to freedom of expression, especially their right to receive or impart information as journalists.

The Court held that there had been a **violation of Article 10** of the Convention. It found in particular that the article published by the weekly newspaper *Nokta*, on the basis of “confidential” military documents about a system for classifying the media on the basis of whether they were “favourable” or “unfavourable” to the armed forces, was capable of contributing to public debate. Emphasising the importance of freedom of expression with regard to matters of public interest and the need to protect journalistic sources, including when those sources were State officials highlighting unsatisfactory practices in their workplace, the Court held that the interference with the journalists’ right to freedom of expression, especially their right to impart information, had not been proportionate to the legitimate aim sought, had not met a pressing social need, and had not therefore been necessary in a democratic society; the interference had consisted in the seizure, retrieval and storage by the authorities of all of the magazine’s computer data, even data that was unrelated to the article, with a view to identifying the public-sector whistle-blowers. Lastly, the Court considered that this measure was such as to deter potential sources from assisting the press in informing the public on matters of general interest, including when they concerned the armed forces.

Pending application

Ivashchenko v. Russia (application no. 61064/10)

Application communicated to the Russian Government on 5 October 2011

The applicant is a photojournalist. When returning to Russia after a travel to Abkhazia where he had taken several photographs concerning, as he described it, “the life of this unrecognised Republic”, his belongings, including a laptop and several electronic storage devices, were subjected to an inspection. The applicant complains in particular that the customs authorities unlawfully and without valid reasons examined the data contained on his laptop and storage devices. He further argues that the actions of the customs authorities violated his right to freedom of expression and, in particular, that no sufficient procedural safeguards were in place to protect him from unjustified interference or to protect journalistic sources.

The Court gave notice of the application to the Russian Government and put questions to the parties under Articles 8 (right to respect for private life, and correspondence), 10 (freedom of expression) and 13 (right to an effective remedy) of the Convention.

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