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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.

Becker v. Norway

5 October 2017

This case concerned a journalist who was ordered to give evidence in a criminal case brought against one of her sources, Mr X, for market manipulation. Mr X had confirmed to the police that he had been the applicant's source for an article she had written in 2007 about the Norwegian Oil Company's allegedly difficult financial situation. He was subsequently charged with using the applicant to manipulate the financial market. The applicant refused to testify at any stage of the proceedings against Mr X, and the courts therefore ordered her to testify about her contacts with him, finding that there was no source to protect as he had already come forward. They also considered that her evidence might significantly assist the courts in elucidating the case. Mr X was however convicted as charged before the final decision on her duty to give evidence had been made. The applicant complained about the decision ordering her to give evidence on her contacts with her source, alleging that this would have most likely lead to other sources being identified too. She also argued that, in any case, there had been no real need for her testimony in the case against her source.

The Court held that there had been a **violation of Article 10** of the Convention. It found that its assessment turned, above all, on whether the applicant's evidence had been needed during the criminal investigation and subsequent court proceedings against her source. It pointed out that her refusal to disclose her source (or sources) had not at any point in time hindered either the investigation or proceedings against Mr X. Indeed, the first-instance court which convicted Mr X had been informed by the prosecutor that no motion for extension (pending a final decision on the duty to give evidence) had been made, because the case had been sufficiently disclosed even without Ms Becker's statement. The Court also bore in mind that the applicant's journalistic methods had never been called into question and she had not been accused of any illegal activity. Furthermore, her right as a journalist to keep her sources confidential could not automatically be removed because of a source's conduct or because the source's identity had become known. The Court was not therefore convinced that either the circumstances in the present case or the reasons provided had justified compelling the applicant to testify.

Jecker v. Switzerland

6 October 2020

The applicant in this case, a journalist, submitted that she had been compelled to give evidence during a criminal investigation into drug trafficking and that the authorities had required her to disclose her sources following the publication of a newspaper article about a soft-drug dealer who had provided her with information. She complained of an unjustified interference with the exercise of her right as a journalist not to disclose her sources.

The European Court held that there had been a **violation of Article 10** of the Convention in respect of the applicant. It noted in particular that the Swiss Federal Supreme Court had found that the applicant could not rely on the right to refuse to testify, since trafficking in soft drugs was an aggravated offence. Referring to the balance struck in the legislation between the interests at stake, the Federal Supreme Court had held that the public interest in prosecuting an aggravated drug offence outweighed the interest in protecting a source. The European Court pointed out in its judgment that in view of the importance of the protection of journalistic sources for press freedom in a democratic society, a requirement for a journalist to disclose the identity of his or her source could not be compatible with Article 10 of the Convention unless it was justified by an overriding requirement in the public interest. In the present case, it was not sufficient for the interference to have been imposed because the offence in question fell within a particular category or was caught by a legal rule formulated in general terms; instead, it should have been ascertained that it was necessary in the specific circumstances. However, the Federal Supreme Court had decided the case with reference to the balancing exercise performed in general and abstract terms by the

legislature. Its judgment could not therefore lead to the conclusion that the order for the applicant to give evidence had satisfied an overriding requirement in the public interest. Accordingly, the Federal Supreme Court had failed to provide sufficient justification that the measure complained of had corresponded to a pressing social need, and the interference with the exercise of the applicant's freedom of expression could not be regarded as necessary in a democratic society.

Big Brother Watch and Others v. the United Kingdom

25 May 2021 (Grand Chamber)

These applications were lodged after revelations by Edward Snowden (former contractor with the US National Security Agency) about programmes of surveillance and intelligence sharing between the USA and the United Kingdom. The case concerned complaints by journalists and human-rights organisations in regard to three different surveillance regimes: (1) the bulk interception of communications; (2) the receipt of intercept material from foreign governments and intelligence agencies; (3) the obtaining of communications data from communication service providers[1].

The Grand Chamber held: unanimously, that there had been a **violation of Article 8** (right to respect for private life and correspondence) of the Convention in respect of the bulk intercept regime; unanimously, that there had been a **violation of Article 8** in respect of the regime for obtaining communications data from communication service providers; by twelve votes to five, that there had been **no violation of Article 8** in respect of the United Kingdom's regime for requesting intercepted material from foreign Governments and intelligence agencies; unanimously, that there had been a **violation of Article 10** (freedom of expression) of the Convention, concerning both the bulk interception regime and the regime for obtaining communications data from communication service providers; and, by twelve votes to fives, that there had been **no violation of Article 10** in respect of the regime for requesting intercepted material from foreign Governments and intelligence agencies. The Court considered in particular that, owing to the multitude of threats States face in modern society, operating a bulk interception regime did not in and of itself violate the Convention. However, such a regime had to be subject to "end-to-end safeguards", meaning that, at the domestic level, an assessment should be made at each stage of the process of the necessity and proportionality of the measures being taken; that bulk interception should be subject to independent authorisation at the outset, when the object and scope of the operation were being defined; and that the operation should be subject to supervision and independent ex post facto review. Having regard to the bulk interception regime operated in the UK, the Court identified the following deficiencies: bulk interception had been authorised by the Secretary of State, and not by a body independent of the executive; categories of search terms defining the kinds of communications that would become liable for examination had not been included in the application for a warrant; and search terms linked to an individual (that is to say specific identifiers such as an email address) had not been subject to prior internal authorisation. The Court also found that the bulk interception regime had not contained sufficient protections for confidential journalistic material. The regime for obtaining communications data from communication service providers was also found to have not been in accordance with the law. However, the Court held that the regime by which the UK could request intelligence from foreign governments and/or intelligence agencies had had sufficient safeguards in place to protect against abuse and to ensure that UK authorities had not used such requests as a means of circumventing their duties under domestic law and the Convention.

[1]. At the relevant time, the regime for bulk interception and obtaining communications data from communication service providers had a statutory basis in the Regulation of Investigatory Powers Act 2000. This had since been replaced by the Investigatory Powers Act 2016. The findings of the Grand Chamber relate solely to the provisions of the 2000 Act, which had been the legal framework in force at the time the events complained of had taken place.

Standard Verlagsgesellschaft mbH v. Austria (No. 3)

7 December 2021

This case concerned court orders for the applicant media company to reveal the sign-up information of registered users who had posted comments on its website, derStandard.at, the website of the newspaper *Der Standard*. This had followed comments allegedly linking politicians to, among other things, corruption or neo-Nazis, which the applicant company had removed, albeit refusing to reveal the information of the commenters.

The Court held that there had been a **violation of Article 10** of the Convention in the present case, finding that the court orders in question had not been necessary in a democratic society. The Court found, in particular, that user data did not enjoy the protection of "journalistic sources", and there was no absolute right to online anonymity. However, the domestic courts had not even balanced the interests of the plaintiffs with the interests of the applicant company in keeping its users anonymous so as to help promote the free exchange of ideas and information as covered by Article 10 of the Convention.

Pending applications

Association confraternelle de la presse judiciaire v. France and 11 other applications (nos. 49526/15, 49615/15, 49616/15, 49617/15, 49618/15, 49619/15, 49620/15, 49621/15, 55058/15, 55061/15, 59602/15 and 59621/15)

Applications communicated to the French Government on 26 April 2017

These applications, which were lodged by lawyers and journalists, as well as legal persons connected with these professions, concern the French Intelligence Act of 24 July 2015.

The Court gave notice of the applications to the French 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.

Similar applications pending: **Follorou v. France (no. 30635/17) and Johannes v. France (no. 30636/17)**

Application communicated to the French Government on 4 July 2017

The Court gave notice of the applications to the French Government and put questions to the parties under Articles 6 § 1 (right to a fair trial), 8 (right to respect for private life), 10 (freedom of expression) and 13 (right to an effective remedy) of the Convention.

Start Media Ltd v. Armenia and one other application (no. 34286/15 and no. 34321/15)

Applications communicated to the Armenian Government on 30 August 2021

The applicants are, in the first case, a private company, which at the material time ran a web-based media site and, in the second case, another private company, which at the material time published a newspaper, and its journalist. They complain about a court order requiring the disclosure of their journalistic sources.

The Court gave notice of the applications to the Armenian Government and put questions to the parties under Article 10 (freedom of expression) of the Convention.

Searches of journalists' home or workplace, secret monitoring of communications, accessing of the phone data 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'Équipe* 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.

Sedletska v. Ukraine

1 April 2021

This case concerned judicial authorisation of the accessing of the phone data of the applicant, a journalist with Radio Free Europe/Radio Liberty, by the investigating authorities, which had threatened the protection of her journalistic sources. The applicant complained, of an unjustified interference with the right to protection of journalistic sources.

The Court held that there had been a **violation of Article 10** of the Convention in respect of the applicant. In view of its findings in the case, it was not convinced that the data access authorisation given by the domestic courts had been justified by an "overriding requirement in the public interest" and, therefore, necessary in a democratic society.

Sergey Sorokin v. Russia[2]

30 August 2022

The applicant, a journalist and public activist, had published on the website of his weekly newspaper an interview with a high-ranking police officer regarding a scandal about abuse of power. A criminal case was subsequently opened against the police officer for disclosing State secrets. The applicant complained about the search of his flat and the seizure of his computer, hard drives and an audio cassette in this context. He also alleged that the subsequent judicial review of the measures against him had failed to balance protection of journalistic sources against the needs of the criminal investigation.

The Court held that there had been a **violation of Article 10** of the Convention, finding that the impugned search had been carried out in the absence of procedural safeguards against interference with the confidentiality of the applicant's journalistic sources and had therefore not been "necessary in a democratic society" to achieve the legitimate aim pursued, namely preventing crime.

[2]. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").

See also, recently:

Avaz Zeynalov v. Azerbaijan
22 April 2021

Texts and documents

See in particular:

- ECHR Knowledge Sharing platform (ECHR-KS), **Article 10 - Freedom of expression**

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