Thematic factsheet[1]
Last update: June 2018

THE PROTECTION OF JOURNALISTIC SOURCES, A CORNERSTONE OF THE FREEDOM OF THE PRESS

According to the case-law of the European Court of Human Rights, the right of journalists not to disclose their sources is not a mere privilege to be granted or taken away depending on the lawfulness or unlawfulness of their sources, but is part and parcel of the right to information, to be treated with the utmost caution. Without an effective 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.

Any interference with the right to protection of journalistic sources (searches at journalists' workplace or home, seizure of journalistic material, disclosure orders etc) that could lead to their identification must be backed up by effective legal procedural safeguards commensurate with the importance of the principle at stake. First and foremost among these safeguards is the guarantee of a review by an independent and impartial body to prevent unnecessary access to information capable of disclosing the sources' identity. Such a review is preventive in nature. The review body has to be in a position to weigh up the potential risks and respective interests prior to any disclosure. Its decision should be governed by clear criteria, including as to whether less intrusive measures would suffice.

The disclosure orders placed on journalists have a detrimental impact not only on their sources, whose identity may be revealed, but also on the newspaper against which the order is directed, whose reputation may be negatively affected in the eyes of future potential sources by the disclosure, and on the members of the public, who have an interest in receiving information imparted through anonymous sources and who are also potential sources themselves. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect that an order for disclosure of a source has on the exercise of that freedom, such a measure cannot be compatible with Article 10 unless it is justified by an overriding requirement in the public interest.

Journalists obliged by judicial order to disclose their journalistic sources

Detention of a journalist with a view to compelling him to disclose his source of information

Voskuil v. the Netherlands - 64752/01
Judgment 22.02.2008
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.

[1] This document presents a non-exhaustive selection of the CoE instruments and of the ECtHR relevant case law. Its aim is to improve the awareness of the acts or omissions of the national authorities likely to amount to a hindrance of Article 10 of the Convention. This information is not a legal assessment of the alerts and should not be treated or used as such.

The European Court of Human Rights, 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.

Surveillance of journalists and order for them to surrender documents capable of identifying their sources

Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands - 39315/06
Judgment 22.11.2012

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 European Court of Human Rights 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.

Television company ordered to hand over to the police unedited footage involving suspected paedophile

Nordisk Film & TV A/S v. Denmark (dec.) - 40485/02,
Decision 8.12.2005

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 European Court of Human Rights 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.

Judicial order requiring news media to disclose a leaked document liable to lead to the identification of their source

Financial Times Ltd and Others v. the United Kingdom - 821/03
Judgment 15.12.2009

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 European Court of Human Rights 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.

Police seizure of material that could have led to identification of journalistic sources

Sanoma Uitgevers B.V. v. the Netherlands [GC] - 38224/03
Judgment 14.9.2010

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 European Court of Human Rights 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.

Disclosure order granted to private company justified by a threat of severe damage to its business and to the livelihood of its employees

Goodwin v. the United Kingdom - 17488/90
Judgment 27.3.1996

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.

Ordering a journalist to give evidence on a source was not justified, even though the source himself had come forward to the police

Becker v. Norway - 21272/12
Judgment 5.10.2017

Before the European Court the applicant alleged that she had been compelled to give evidence that would have enabled her journalistic sources to be identified, in violation of her right under Article 10 to receive and impart information.

In August 2007 the applicant, a journalist, wrote an article concerning a company quoted on the stock exchange, based on a telephone conversation with a Mr X and a letter drafted by an attorney. In June 2010 Mr X was indicted for market manipulation and insider trading. He was accused of having requested the attorney to draft the letter which gave the impression that it had been written on behalf of a number of bond holders concerned about the company's liquidity, finances and future, when in fact, it had been written solely on behalf of Mr X, who owned a single, recently acquired bond. Following the publication of the applicant's article, the price of the company's stock fell.

The applicant was subsequently questioned by the police, who informed her that Mr X had admitted giving her the letter. The applicant said she was willing to state that she had received the letter but she refused to give additional information on the grounds that journalistic sources were protected. During the criminal proceedings against Mr X, the applicant was summoned as a witness. Relying on domestic

law and Article 10 of the Convention, she refused to testify. The first-instance court held that the applicant had a duty to give evidence about her contacts with Mr X in relation to the attorney's letter. In 2011 the Supreme Court dismissed the applicant's appeal, holding that no violation of the Convention would arise where a source had come forward and as such, there was no source to protect. The principle justification for source protection was based on the consequences that the disclosure of a source's identity might have for the free flow of information. The applicant was fined EUR 3,700 for an offence against the good order of court proceedings.

The European Court of Human Rights was not convinced that either the circumstances in the present case or the reasons provided had justified compelling Ms Becker to testify. 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. It also bore in mind that Ms Becker'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.

Conclusion: violation of Article 10 of the Convention

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

Wide powers given to investigative officers who carried out searches at journalists' home and place of work

Roemen and Schmitt v. Luxembourg 51772/99
Judgment 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 European Court of Human Rights 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.

Massive searches of journalists' places of work, homes and, in some instances, cars in order to identify magistrates having leaked information about pending criminal cases

Ernst and others v. Belgium 33400/96
Judgment 15.7.2003

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 European Court of Human Rights 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.

Insufficient reasons given by Belgian courts to justify searches

Tillack v. Belgium 20477/05
Judgment 27.11.2007

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 European Court of Human Rights 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.

Disproportionate search of the premises of a daily newspaper to determine in what circumstances and conditions journalists had obtained a copy of a confidential draft report

Martin and Others v. France 30002/08
Judgment 12.04.2012

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 European Court of Human Rights 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.

Searches carried out at the premises of newspapers and at the homes of journalists accused of breaching the confidentiality of a judicial investigation by reproducing passages from records of transcripts of tapped telephone conversation

Ressiot and Others v. France no. 15054/07
Judgment 28.06.2012

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 European Court of Human Rights 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.

Order for search and seizure couched in wide terms that did not preclude discovery of journalist's sources

Saint-Paul Luxembourg S.A. v. Luxembourg - 26419/10
Judgment 18.04.2013

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 European Court of Human Rights 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.

Urgent search at journalist's home involving the seizure of data storage devices containing her sources of information

Nagla v. Latvia 73469/10
Judgment 16.07.2013

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 European Court of Human Rights 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.

A newspaper informant of a series of bomb attacks is not "a source"

Stichting Ostade Blade v. the Netherlands 8406/06
27.05.2014 (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 European Court of Human Rights 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.

Search of professional premises and seizure of the documents intended to identify journalistic sources

Görmüş and Others v. Turkey
Judgment 19.01.2016 49085/07

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 European Court of Human Rights 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.

Custom authorities allowed to examine the data contained on a journalist laptop and to copy that data - Alleged deficient legislation

Ivaschenko v. Russia no. 61064/10
Judgment 13.2.2018

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 storages 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 European Court of Human Rights the Court noted that the search of the applicant's laptop (allegedly without any reasonable suspicion of any offence or unlawful conduct), the copying of his personal and professional data followed by its communication for a specialist assessment, and the retention of his data for some two years had gone beyond what could be perceived as procedures that were "routine", relatively non-invasive and for which consent was usually given. The applicant had not able to choose whether he wanted to present himself and his belongings to customs and a possible customs inspection. In the Court's view, by submitting his effects to customs controls a person does not automatically and in all instances waive or otherwise forgo the right to respect for his or her "private life" or, as the case may

be, “correspondence”. It was thus open to the applicant to rely on the right to respect for his private life and there had been an interference under Article 8 of the Convention.

The Court went on to consider whether the interference was justified. Having regard to the reasoning of the domestic decisions, the Court was not satisfied that the combined reading of the relevant provisions of the Customs Code and other legal rules constituted a foreseeable interpretation of national law and provided a legal basis for the copying of electronic data contained in electronic documents located in “container” such as a laptop.

In addition, the safeguards provided by Russian law had not constituted an adequate framework for the wide powers afforded to the executive which could offer individuals adequate protection against arbitrary interference.

Firstly, the Court was not satisfied that there was a clear requirement at the authorisation stage that the inspection and, first and foremost, the copying be subjected to a requirement of any assessment of the proportionality of the measure. It was evident that the usual approach to the sampling by customs of “goods” was not adequate as regards electronic data.

Secondly, it did not appear that the comprehensive measure used in the applicant’s case had to be based on some notion of a reasonable suspicion that someone making a customs declaration had committed an offence. That apparent lack of any need for reasonable suspicion relating to an offence was exacerbated by the fact that the domestic authorities, ultimately the courts on judicial review, did not attempt to define and apply notions from the relevant domestic legislation such as “propaganda for fascism” or “social, racial, ethnic or religious enmity” to any of the ascertained facts.

Thirdly, the Court was not convinced that the fact that the applicant was returning from a disputed area (Abkhazia) constituted in itself a sufficient basis for proceeding with the extensive examination and copying of his electronic data on account of possible “extremist” content.

Lastly, although the exercise of the powers to inspect and sample was amenable to judicial review, the width of those powers was such that the applicant faced formidable obstacles in showing that the customs officers’ actions were unlawful, unjustified or otherwise in breach of Russian law.

There were thus deficiencies in the domestic regulatory framework as the domestic authorities, including the courts, were not required to give relevant and sufficient reasons for justifying the interference in the present case and did not consider it relevant, at any stage or in any manner, that the applicant was carrying journalistic material.

In sum, the respondent Government had not convincingly demonstrated that the relevant legislation and practice afforded adequate and effective safeguards against abuse in a situation where the sampling procedure was used in relation to electronic data stored on an electronic device. The interference was not, therefore, “in accordance with the law”.

Conclusion – violation of Article 8 of the Convention

Other relevant Council of Europe instruments

Recommendation No. R (2000) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information *(Adopted by the Committee of Ministers on 8 March 2000 at the 701st meeting of the Ministers' Deputies)*

"The Committee of Ministers (…)

Convinced that the protection of journalists' sources of information constitutes a basic condition for journalistic work and freedom as well as for the freedom of the media;

Recalling that many journalists have expressed in professional codes of conduct their obligation not to disclose their sources of information in case they received the information confidentially;

Recalling that the protection of journalists and their sources has been established in the legal systems of some member states;

Recalling also that the exercise by journalists of their right not to disclose their sources of information carries with it duties and responsibilities as expressed in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Aware of the Resolution of the European Parliament of 1994 on confidentiality for journalists' sources and the right of civil servants to disclose information; (…)

Recommends to the governments of member states:

1. to implement in their domestic law and practice the principles appended to this recommendation,
2. to disseminate widely this recommendation and its appended principles, where appropriate accompanied by a translation, and
3. to bring them in particular to the attention of public authorities, police authorities and the judiciary as well as to make them available to journalists, the media and their professional organisations. (…)"

Recommendation 1950 (2011) of the Parliamentary Assembly "The protection of journalists' sources"

"The Assembly notes with concern the large number of cases in which public authorities in Europe have forced, or attempted to force, journalists to disclose their sources, despite the clear standards set by the European Court of Human Rights and the Committee of Ministers. These violations are more frequent in member states without clear legislation. In cases of investigative journalism, the protection of sources is of even greater importance (…)

Public authorities must not demand the disclosure of information identifying a source unless the requirements of Article 10, paragraph 2, of the Convention are met and unless it can be convincingly established that reasonable alternative measures to disclosure do not exist or have been exhausted, the legitimate interest in the disclosure clearly outweighs the public interest in the non-disclosure, and an overriding requirement of the need for disclosure is proved.

The disclosure of information identifying a source should therefore be limited to exceptional circumstances where vital public or individual interests are at stake and can be convincingly established. The competent authorities, requesting exceptionally the disclosure of a source, must specify the reasons why such vital interest outweighs the interest in the non-disclosure and whether alternative measures have been exhausted, such as other evidence. If sources are protected against any disclosure under national law, their disclosure must not be requested. (…)"