Thematic factsheet[1]
Update: June 2018

FREEDOM TO IMPART CONFIDENTIAL INFORMATION AND ITS LIMITS

The right of the media to inform the public and the public's right to receive information about confidential information might came up against equally important public and private interests, such as the protection of national security, the effectiveness of the criminal investigation and the right of the accused to the presumption of innocence and protection of his or her private life. A fair balance should therefore be struck between the different interests at stake. To benefit from the protection of Article 10, the content of the article containing confidential information should, according to the European Court of Human Rights' case law, be capable of contributing to the public debate. Moreover, even in the context of a debate on a topic of public interest, the damage, if any, suffered by public authorities or private individuals as a result of disclosure should not overtake the interest of the public in having the information revealed. In any event, the sanction imposed on journalists disclosing confidential information should not deter them from contributing to public discussion of issues affecting the life of the community and should not amount to a form of censorship intended to discourage the press from expressing criticism. By the same token, it should not be liable to hamper the press in performing its task as purveyor of information and public watchdog. The dominant position of the State institutions requires the authorities to show restraint in resorting to criminal proceedings in matters of freedom of expression.

Conviction to a fine for having disclosed in the press a confidential report by the Swiss ambassador to the Unites States on the subject of compensation due to Holocaust victims

Stoll v. Swizerland, no. 69698/01
Judgment 10.12.2007

The case relates to the sentencing of the applicant, a journalist by profession, to payment of a fine for having disclosed in the press a confidential report by the Swiss ambassador to the United States concerning the strategy to be adopted by the Swiss Government in negotiations between, among others, the World Jewish Congress and Swiss banks on the subject of compensation due to Holocaust victims for unclaimed assets deposited in Swiss bank accounts. The applicant obtained a copy of the report as the result of a breach of official secrecy by a person whose identity remains unknown.

In assessing whether the measure taken by the Swiss authorities had been necessary, the Court took account of the need to weigh up the two public interests involved: the interest of readers in being informed on a topical issue and the interest of the authorities in ensuring a positive and satisfactory outcome to the diplomatic negotiations being conducted. Although the impugned articles had concentrated almost exclusively on the ambassador's personality and personal style, they had been capable of contributing to the public debate on the issue of unclaimed assets, which was the subject of

[1] This document presents a non-exhaustive selection of the European Court of Human Rights' relevant case law and of the other CoE instruments. 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.

lively discussion in Switzerland at that time. The public had therefore had an interest in publication of the articles.

As to the interests which the Swiss authorities had sought to protect, it was vital to diplomatic services and the smooth functioning of international relations for diplomats to be able to exchange confidential or secret information. However, for the Court, the confidentiality of diplomatic reports could not be preserved at any price; in weighing the interests at stake against each other, the content of the report and the potential threat posed by its publication were the important factors. The disclosure of passages from the ambassador's report at that point in time had been liable to have negative repercussions on the smooth progress of the negotiations in which Switzerland was engaged, on account not just of the content of the ambassador's remarks but also of the way in which he had expressed himself. The disclosure – albeit partial – of the content of the ambassador's report had been capable of undermining the climate of discretion necessary to the successful conduct of diplomatic relations in general and of having negative repercussions on the negotiations being conducted by Switzerland in particular. Hence, given that they had been published at a particularly delicate juncture, the articles written by the applicant had been liable to cause considerable damage to the interests of the Swiss authorities.

As to the applicant's conduct, the question whether the form of the articles had complied with the rules of journalistic ethics carried greater weight. For the Court, the content of the articles had been clearly reductive and truncated and the language used had tended to suggest that the ambassador's remarks were anti-Semitic. Furthermore, the way in which the articles had been edited, with sensationalist headings, seemed unfitting for a subject as important and serious as that of the unclaimed funds. Lastly, the applicant's articles had also been imprecise and liable to mislead the reader.

In the circumstances, and in view of the fact that one of the articles had been placed on the first page of a Swiss Sunday newspaper with a large circulation, the Court shared the opinion of the Swiss Government and the Press Council that the applicant's chief intention had not been to inform the public on a topic of general interest but to make the ambassador's report the subject of needless scandal. Finally, the Court considered that the fine imposed on the applicant had not been disproportionate to the aim pursued.

Conclusion: no violation of Article 10 of the Convention

Order restraining mass publication of tax information

Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland [GC] - 931/13
Judgment 27.6.2017

The first applicant company published a newspaper providing information on the taxable income and assets of Finnish taxpayers. The information was, by law, public. The second applicant company offered a service supplying taxation information by SMS text message. In April 2003 the Data Protection Ombudsman requested the Data Protection Board to restrain the applicant companies from processing taxation data in the manner and to the extent they had in 2002 and from passing such data to an SMS-service. The Data Protection Board dismissed the Ombudsman's request on the grounds that the applicant companies were engaged in journalism and so were entitled to derogation under section 2(5) of the Personal Data Act. The case subsequently came before the Supreme Administrative Court, which in February 2007 sought a preliminary ruling from the Court of Justice of the European Union (CJEU) on the interpretation of the EU Data Protection Directive. In its judgment of 16 December 2008 the CJEU ruled that activities relating to data from documents which were in the public domain under national legislation could be classified as "journalistic activities" if their object was to disclose to the public information, opinions or ideas, irrespective of the medium used to transmit them. In September 2009

the Supreme Administrative Court directed the Data Protection Board to forbid the processing of taxation data in the manner and to the extent carried out by the applicant companies in 2002. Noting that the CJEU had found that the decisive factor was to assess whether a publication contributed to a public debate or was solely intended to satisfy the curiosity of readers, the Supreme Administrative Court concluded that the publication of the whole database collected for journalistic purposes and the transmission of the information to the SMS service could not be regarded as journalistic activity.

The European Court of Human Rights held that the ban had interfered with the companies' freedom of expression. However, it had not violated Article 10 because it had been in accordance with the law, it had pursued the legitimate aim of protecting individuals' privacy, and it had struck a fair balance between the right to privacy and the right to freedom of expression. In particular, the Court agreed with the conclusion of the domestic courts that the mass collection and wholesale dissemination of taxation data had not contributed to a debate of public interest, and had not been for a solely journalistic purpose:

- the Court was not persuaded that publication of taxation data in the manner and to the extent done by the applicant companies (the raw data was published as catalogues *en masse*, almost verbatim) had contributed to such a debate or indeed that its principal purpose was to do so;
- Some 1,200,000 natural persons were the subject of the publication. They were all taxpayers but only a very few were individuals with a high net income, public figures or well-known personalities within the meaning of the Court's case-law. The majority of the persons whose data were listed in the newspaper belonged to low-income groups.
- It was clear that the applicant companies had a policy of circumventing normal channels and, accordingly, the checks and balances established by the domestic authorities to regulate access and dissemination.
- For the Court, the fact that the data in question were accessible to the public under the domestic law did not necessarily mean that they could be published to an unlimited extent. Publishing the data in a newspaper, and further disseminating that data via an SMS service, had rendered them accessible in a manner and to an extent that was not intended by the legislator. The safeguards in national law were built in precisely because of the public accessibility of personal taxation data, the nature and purpose of data-protection legislation and the accompanying journalistic derogation. Under these circumstances, the authorities of the respondent State enjoyed a wide margin of appreciation in deciding how to strike a fair balance between the respective rights under Articles 8 and 10.
- The fact that, in practice, the limitations imposed on the quantity of the information to be published may have rendered some of the applicants' business activities less profitable was not, as such, a sanction within the meaning of the Court's case-law.

Conclusion : **no violation** of Article 10 of the Convention

Documents from a set of criminal proceedings published before they were was to be read out at a public hearing

Giesbert et autres c. France - 68974/11, 2395/12 et 76324/13
Judgment 1.6.2017

The case concerned a finding against the *Le Point* weekly magazine, its editor-in-chief, Franz-Olivier Giesbert, and a journalist, Hervé Gattegno, for publishing documents from a set of criminal proceedings before it was to be read out at a public hearing, in the high-profile Bettencourt case.

The European Court of Human Rights found, in particular, that the interests of the applicants and the general public in communicating and receiving information on a subject of general interest did not take

precedence over the protection of the rights of others and the proper administration of justice. Furthermore, the Court considered that the findings against the applicants had met a sufficiently compelling social need to prevail over the public interest in freedom of the press, and that they therefore could not be deemed disproportionate to the legitimate aims pursued.

- The Court noted that Mr Giesbert and Mr Gattegno could not have been unaware of the origin of the documents reproduced in their articles or of the confidentiality of the information published. Section 38 of the 1881 Act targeted and punished not the conditions under which a procedural document had been obtained, but the mere fact that it had been published.
- As regards the content of the articles, even though the journalist had been careful not to draw any explicit conclusions in the article, its whole thrust was that B. was guilty. The article had provided several quotations to highlight the contradictions and weaknesses of B.'s statements and to provide the public with biased information.
- Publishing such articles the day before B.'s appearance at the Nanterre Criminal Court, and two months before the scheduled hearing – was liable to heavily influence the conduct of the proceedings and affect potential witnesses, and indeed the judges. The Court reiterated that publishing a biased article could affect the objectivity of the trial court. The Court did not agree with the applicants that the extensive media coverage of the case had vindicated the verbatim publication of numerous lengthy excerpts from procedural documents.
- Given the complex issues before the courts, the publication of quotations from those documents in biased articles had risked disrupting the proper conduct of the proceedings and jeopardising B.'s right to a fair trial. Confirming that the publishing ban set out in section 38 of the 1881 Act was limited in scope and duration, the Court ruled that Mr Giesbert and Mr Gattegno, as press professionals, had been in a position to obviate such risks without affecting the substance of the information which they had wished to disseminate.
- Finally, the Court held that the penalties imposed on the applicants could not be deemed excessive or capable of having a chilling effect on the exercise of freedom of the media.

Conclusion: no violation of Article 10 of the Convention

Journalist fined for breaching secrecy of judicial investigation into a case of alleged paedophilia

Y. v. Switzerland no. 22998/13
Judgment 6.6.2017

The case concerned the fining of a journalist for reporting information covered by the secrecy of a judicial investigation. The magazine article in question concerned criminal proceedings against a "leading property manager" on charges of paedophilia. The journalist criticised the fact that the accused had been released, citing extracts from the prosecution's appeal against the decision of the investigating judge to end the pre-trial detention. The article went on to describe the alleged facts in detail.

The journalist had obtained the relevant documents from the father of one of the victims who had asked him to publish the information contained in them. The information had not therefore been obtained unlawfully. However, as a professional journalist, he could not have been unaware that the disclosure of that information was punishable under the Swiss Criminal Code.

Like the domestic courts, the European Court of Human Rights took the view that the article, which contained a considerable amount of detailed information and extracts from the complainant's statement to the police, had constituted a breach of the privacy of those concerned and did not contribute to a public debate on the functioning of the justice system. The Court observed that the

article described in an extensive and detailed manner the sexual abuse committed against the victims, quoting passages from documents in the investigation file. In the Court's view, this type of information called for a high degree of protection under Article 8 of the Convention. Even when designated by pseudonyms, the victims could have been identified by the indications in the article. The fact that Y. published his article after being approached by the father of one of the victims did not release him from his ethical duty to act with extreme restraint and to consider the interests of the child victims.

The Court lastly found that the fine – which had been paid on behalf of the journalist by the magazine's director – was a sanction for breaching the secrecy of the criminal investigation and protected the administration of justice, the rights of the accused to a fair trial and the rights of the complainant and presumed victims to respect for their private life. Sanctions for breaches of the secrecy of a criminal investigation were general in scope and were not intended solely for persons actually under investigation. The matter fell with the State's margin of appreciation.

Conclusion: no violation of Article 10 of the Convention

Conviction of journalists for possessing and using radio equipment to intercept confidential police communications

Brambilla and Others v. Italy - 22567/09
Judgment 23.6.2016

The first applicant is the director of a local online newspaper and the remaining two applicants are journalists working for the newspaper. In August 2002 the applicants listened in on a conversation during which the carabinieri decided to send a patrol to a location where weapons were being stored illegally. The second and third applicants arrived at the scene while the carabinieri were there. After obtaining a search warrant the carabinieri searched their vehicle and found two items of equipment capable of intercepting police radio communications. They later went to the newspaper's offices and seized two pieces of equipment tuned to the radio frequencies used by the carabinieri. Other frequencies used by police operational centres were stored in the equipment's memory. The applicants were convicted on appeal and received custodial sentences of between six months and one year and three months. The radio equipment was also seized. However, the sentences were suspended by the Court of Appeal.

The European Court of Human Rights doubted whether there had been interference with the applicants' freedom of expression in the present case. Even assuming that Article 10 was applicable, the Court observed that the search and seizure operation and the custodial sentences imposed on the applicants had pursued legitimate aims, in particular the protection of the rights of others, the protection of national security and the prevention of disorder and crime.

The applicants had not been prohibited from bringing the news items to the public's attention. Their conviction had been based solely on the possession and use of radio equipment to intercept police communications, which were confidential under domestic law, in order to obtain information more rapidly.

In seeking to obtain information for publication in a local newspaper the applicants had acted in a manner which, according to domestic law and the consistent interpretation of the Court of Cassation, contravened the criminal law prohibiting in general terms the interception by any persons of conversations not addressed to them, including conversations between law-enforcement officers.

Lastly, the Court of Appeal had suspended the applicants' sentences and there was no evidence in the case file to demonstrate that they had served their custodial sentences. Accordingly, the penalties imposed on the applicants did not appear disproportionate.

The domestic courts had made an appropriate distinction between the applicants' duty to comply with domestic law and their pursuit of their journalistic activity, which had not otherwise been restricted.

Conclusion: no violation of Article 10 of the Convention

Conviction of a journalist for the publication of materials covered by the secrecy of a pending criminal investigation

Bédat v. Switzerland - 56925/08
Judgment 29.3.2016

The applicant, a journalist, published an article in a weekly magazine relating to a set of criminal proceedings against a driver who had been remanded in custody for crashing into a group of pedestrians, killing three and injuring a further eight. The article drew a portrait of the accused, presented a summary of the questions put by the police and the investigating judge and the accused's replies, and was accompanied by several photographs of the letters which he had sent to the investigating judge. The article also comprised a brief summary of statements from the accused's wife and attending physician. The journalist was prosecuted for publishing secret documents and sentenced with a fine of 4,000 Swiss francs.

The European Court of Human Rights observed that Mr Bédat's right to inform the public and the public's right to receive information came up against equally important public and private interests which were protected by the prohibition of disclosing information covered by the secrecy of criminal investigations. Those interests were the authority and impartiality of the judiciary, the effectiveness of the criminal investigation and the right of the accused to the presumption of innocence and protection of his private life. Mr Bédat, as a professional journalist, could not have been unaware of the confidentiality of the information which he was planning to publish.

The Court accepted that the subject of the article had been a matter of public interest. Nevertheless it noted that Mr Bédat had failed to demonstrate how the fact of publishing the documents in question could have contributed to any public debate on the ongoing investigation. His article had been set out in such a way as to paint a highly negative picture of the accused. Publication of an article slanted in that way at a time when the investigation was still ongoing had entailed an inherent risk of influencing the course of proceedings in one way or another. The titles used and the close-up photograph left no doubt, in the eyes of the Court, as to the sensationalist approach which Mr Bédat had adopted in his article, highlighting the vacuity of the accused's statements and his contradictions, which were sometimes described as "repeated lies". However, those were precisely the kind of questions which the judicial authorities had had to answer.

As regards the penalty imposed on the journalist, the Court found that fining Mr Bédat for violation of secrecy had not amounted to a disproportionate interference in the exercise of his right to freedom of expression. It did not consider that the sanction could have had any deterrent effect on the exercise of freedom of expression by Mr Bédat or by any other journalist wishing to inform the general public about ongoing criminal proceedings.

Conclusion: no violation of Article 10 of the Convention

Seizure and withdrawal of a publication on security grounds following a publication of a six-year-old confidential report

Vereniging Weekblad Bluf! v. the Netherlands - 16616/90
Judgment 9.2.1995

The applicant association submitted that the seizure and withdrawal of issue no. 267 of the weekly magazine *Bluf!* containing a six-year-old confidential report were not necessary for protecting national security. The Government argued that it was for the State to decide whether it was necessary to impose and preserve such confidentiality, the State being in the best position to assess the use that might be made of the information to the detriment of national security.

The European Court of Human Rights noted that there were not sufficient reasons under the Convention to justify the seizure and withdrawal of the publication. Because of the nature of the duties performed by the internal security service, the Court accepted that such an institution must enjoy a high degree of protection with regard to disclosure of information about its activities. Nevertheless, it found open to question whether the information in the report made public in the weekly magazine was sufficiently sensitive to justify preventing its distribution. The Court noted that the document in question was six years old at the time of the seizure. Furthermore, it was of a fairly general nature, the head of the security service having himself admitted that the various items of information, taken separately, were no longer State secrets. Lastly, the report was marked simply "Confidential", which represents a low degree of secrecy at national level.

Conclusion: violation of Article 10 of the Convention

Military journalist's conviction and sentencing for treason for having collected and kept information of a military nature classified as State secret

Pakso v. Russia no. 69519/01
Judgment 10.5.2010

Relying on Article 10 of the Convention, Mr Pasko submitted before the Court that he was working on a free-lance basis for a Japanese TV station and a newspaper, supplying them with openly available information and video footage. In 1997, the applicant was searched at the airport from where he intended to fly to Japan and a number of his papers were confiscated then with the explanation that they contained classified information. He was arrested and charged with treason through espionage for having collected secret information with the intention of transferring it to a foreign national. He was found guilty as charged and was sentenced to four years' imprisonment.

The Court first noted that both pieces of law on which the domestic courts had based their findings, namely the federal law "State Secret Act" (the Act) of 1993 and a Presidential Decree of 1995 had listed the information classified as secret with sufficient precision, had been in force during the period of the events, had been publicly available, thus enabling Mr Pasko to foresee the consequences of his actions. In addition, the Court observed that, as a serving military officer, the applicant had been bound by an obligation of discretion in relation to anything concerning the performance of his duties. The domestic courts carefully scrutinised each of his arguments. They corroborated their findings with evidence, including recordings of his conversation with a Japanese national, and found that he had collected and kept, with the intention of transferring to a foreign national, information of a military nature that had been classified as a State secret, which had been capable of causing considerable damage to national security. Finally, the applicant had been convicted of treason through espionage as a serving military officer and not as a journalist. There had been nothing in the materials of the case to support the

applicant's allegations that his conviction had been overly broad or politically motivated or that he had been sanctioned for any of his publications.

On balance, the Court found that the domestic courts had struck a right balance of proportionality between the aim to protect national security and the means used for that, namely the sentencing of the applicant to a lenient sentence, much lower than the minimum stipulated in law.

Conclusion: no violation of Article 10 of the Convention

Fine imposed on a journalist for having broadcast excerpts which included sound recordings from a court hearing, obtained without permission from the judge

Pinto Coelho v. Portugal (n° 2) no. 48718/11
Judgment 22.03.2016

Relying on Article 10 of the Convention, Ms Pinto Coelho complained about her criminal conviction for non-authorised use of the recording of a court hearing. During a news programme on the Portuguese television channel for which she has been working as a legal affairs correspondent, Ms Pinto Coelho, defending a young man's innocence and alleging a judicial error, backed up her argument with interviews with several jurists and included in her report shots of the courtroom, extracts of sub-titled sound recordings and the questioning of prosecution and defence witnesses, in which their voices and those of the three judges were digitally altered. The excerpts were followed by Ms Pinto Coelho's commentary, in which she attempted to prove that the victims had not recognised the young man during the trial. After this report was broadcast, the president of the division which had judged the case lodged a complaint with the public prosecutor against Ms Pinto Coelho, complaining that permission had not been given to broadcast extracts of the sound recording of the hearing and film shots of the courtroom. The prosecutor's office brought proceedings for non-compliance with a legal order against Ms Pinto Coelho and three managers of the evening news programme, on the ground that the failure to obtain authorisation was in breach of the provisions of the Code of Criminal Procedure and of the Criminal Code. Before the domestic courts, Ms Pinto Coelho alleged an infringement of the freedom of the press. However, she was convicted of non-compliance with a legal order and ordered to pay a fine of 1,500 euros. The European Court considered that her conviction had not responded to a pressing social need and had not been necessary in a democratic society. It noted, in particular, that, by the time of the broadcast, the case had already been decided by the domestic courts. The excerpts could not, therefore, have a negative influence on the proper administration of justice.

Conclusion: violation of Article 10 of the Convention

Convictions of journalists for using and reproducing material from a pending criminal investigation in a book

Dupuis and Others v. France - 1914/02
Judgment 7.6.2007

The applicants are two French journalists and a publishing company. An "anti-terrorist unit" at the Elysée Palace set up by the French President's Office in the 1980s engaged in telephone tapping and bugging. In the early 1990s the press published a list of people who had been placed under surveillance, including journalists and lawyers, arousing considerable media interest in what came to be known as the "Elysée eavesdropping operations". A judicial investigation was opened in the course of which G.M., deputy director of the President's private office at the material time, was placed under formal investigation for breach of privacy. While the investigation was still in progress the applicant publishing

company published the book “The Ears of the President” (Les Oreilles du Président), which the other two applicants had written, describing the workings of the surveillance operations.

Because they had used and reproduced material from the judicial investigation file in their book, the applicants were found guilty of the offence of using information obtained through a breach of the confidentiality of the investigation or of professional confidentiality. They were ordered to pay a fine and also to pay G.M. damages; the applicant company was found to be civilly liable. The book continued to be published and no copies were seized.

The European Court of Human Rights considered that the subject of the book had concerned a debate which was of considerable public interest, by divulging information concerning an illegal telephone tapping and recording system targeting numerous public figures and organised at the highest level of the State. The public had a legitimate interest in the provision and availability of information.

On the other hand it was legitimate to want to grant special protection to the confidentiality of the judicial investigation, in view of the stakes involved in criminal proceedings, both for the administration of justice and for the right of persons under investigation to be presumed innocent.

However, at the time when the applicants' book was published, in addition to there being wide media coverage of the case, it was already well known that G.M. had been placed under investigation in this case, in connection with a pre-trial investigation which had started about three years earlier and would eventually lead to his conviction and suspended prison sentence some ten years after the offending book was published. Moreover, after the publication of the book and while the judicial investigation was ongoing, G.M. had regularly commented on the case in the press, so protecting the information on account of its confidentiality had not been an overriding requirement. The Court questioned whether there was still an interest in keeping information confidential when it had already been at least partly made public and was likely to be widely known, having regard to the media coverage of the case, both because of the facts and because of the celebrity of many of the victims of the surveillance.

It was necessary to take the greatest care in assessing the need to punish journalists for using information obtained through a breach of the confidentiality of an investigation or of professional confidentiality when they were contributing to a public debate of such importance. The applicants had acted in accordance with the standards governing their profession as journalists.

As to the punishment incurred, no order to destroy or seize the book had been issued and its publication had not been prohibited. The fine, however, although fairly moderate, and the additional damages, did not appear justified.

Conclusion: violation of Article 10 of the Convention

Criminal conviction of investigating journalist for having obtained, in breach of official secret, information about previous convictions of private persons

Dammann v. Switzerland - 77551/01
Judgment 25.4.2006

As a court reporter for a daily newspaper the applicant decided to investigate a major robbery that had taken place after a break-in at a post office in Zürich. As part of that investigation he telephoned the switchboard of the Public Prosecutor’s Office. As none of the public prosecutors were available, the applicant transmitted to an administrative assistant a list of names of persons who had been arrested in

connection with the robbery and asked her for information as to whether the individuals concerned had any previous convictions. After consulting the prosecuting authorities' database, the assistant sent the applicant a fax containing the information he had requested.

The applicant did not publish the information, nor did he use it for any other purpose. However, he apparently showed the fax to a police officer, who reported the incident to the prosecuting authorities. Criminal proceedings were then brought against the applicant who was prosecuted for inciting another to disclose official secrets. He was sentenced to a criminal fine of approximately EUR 325. The domestic courts considered in particular that the applicant, as an experienced court reporter, must have known that the assistant was bound by professional secrecy, that information on those involved in criminal proceedings was confidential, and that no public prosecutor would have agreed to comply with his request. They noted that the interest of individuals in the preservation of their private life prevailed over any public interest, especially as at that stage it was impossible to know whether or not the persons in question would ultimately be convicted of the offences of which they were suspected.

The European Court of Human Rights noted that the case did not concern the restraining of a publication as such or a conviction following a publication, but a preparatory step towards publication, namely a journalist's research and investigative activities. That phase, which also fell within its supervision, called for the closest scrutiny on account of the great danger represented by that sort of restriction on freedom of expression. There was no doubt that in principle data relating to a suspect's criminal record merited protection. However, the information could have been obtained by other means, such as consulting case-law reports or press archives. In the circumstances the grounds relied on by the Swiss authorities to justify fining the applicant did not appear "relevant and sufficient", since it had not actually been "information received in confidence" within the meaning of the Convention and, accordingly, the details in question had been in the public domain. The information had been of a kind that raised matters of public interest in that it had concerned a very spectacular break-in that had been widely reported in the media. With regard to the Swiss courts' argument that the applicant should have known that the information he had requested was confidential, the Court considered that the Swiss Government had to bear a large share of responsibility for the indiscretion committed by the assistant at the public prosecutor's office, especially as the applicant had apparently not tricked, threatened or pressurised her into disclosing the desired information. Furthermore, no damage had been done to the rights of the persons concerned. While there might have been a risk, at a particular time, of interference with other persons' rights, the risk had disappeared once the applicant had himself decided not to publish the information in question.

Moreover, although the penalty imposed on the applicant had not been very harsh, what mattered was not that he had been sentenced to a minor penalty, but that he had been convicted at all. While the penalty had not prevented the applicant from expressing himself, his conviction had nonetheless amounted to a kind of censorship which was likely to discourage him from undertaking research, inherent in his job, with a view to preparing an informed press article on a topical subject. Punishing, as it did, a step that had been taken prior to publication, such a conviction was likely to deter journalists from contributing to public discussion of issues affecting the life of the community and might thus hamper the press in its role as information provider and watchdog. That being so, the applicant's conviction had not been reasonably proportionate to the pursuit of the legitimate aim in question, having regard to the interest of a democratic society in ensuring and maintaining the freedom of the press.

Conclusion: violation of Article 10 of the Convention

Release into the public domain and the subsequent divulging through the press of the content of intercepted telephone conversations

Craxi (n° 2) v. Italy n° 25337/94
Judgment 17.10.2003

The applicant, former Prime Minister of Italy, charged with corruption during the so-called "clean hands" campaign in Italy, complained before the European Court of Human Rights that the publication in the media, during his trial, of his intercepted telephone conversations of a private nature had breached Articles 8 (right to respect for private life) of the Convention.

As a matter of principle, the Court pointed out that there was general recognition of the fact that the courts cannot operate in a vacuum: whilst the courts are the forum for the determination of a person's guilt or innocence on a criminal charge, this does not mean that there can be no prior or contemporaneous discussion of the subject matter of criminal trials elsewhere, be it in specialised journals, in the general press or amongst the public at large. Reporting, including comment, on court proceedings contributes to their publicity and is thus perfectly consonant with the requirement under Not only do the media have the task of imparting such information and ideas: the public also has a right to receive them. This is all the more so where a public figure is involved, such as, in the present case, a political man and former Prime Minister. Such persons inevitably and knowingly lay themselves open to close scrutiny by both journalists and the public at large.

However, public figures are entitled to the enjoyment of the guarantees set out in Article 8 of the Convention on the same basis as every other person. In particular, the public interest in receiving information only covers facts which are connected with the criminal charges brought against the accused. This must be borne in mind by journalists when reporting on pending criminal proceedings, and the press should abstain from publishing information which are likely to prejudice, whether intentionally or not, the right to respect for the private life and correspondence of the accused persons.

The European Court of Human Rights observed that in the present case some of the conversations published in the press were of a strictly private nature. They concerned the relationships of the applicant and his wife with a lawyer, a former colleague, a political supporter and the wife of Mr Berlusconi. Their content had little or no connection at all with the criminal charges brought against the applicant. In the opinion of the Court, their publication by the press did not correspond to a pressing social need. In this context, the Court considered that appropriate safeguards should be available to prevent any such disclosure of a private nature. Furthermore, when such disclosure has taken place, the positive obligation inherent in the effective respect of private life implies an obligation to carry out effective inquiries in order to rectify the matter to the extent possible.

In the present case the Court noted that, once the transcripts were deposited under the responsibility of the registry, the authorities failed in their obligation to provide safe custody in order to secure the applicant's right to respect for his private life. Also, the Court observed that it did not appear that an effective inquiry was carried out in order to discover the circumstances in which the journalists had access to the transcripts of the applicant's conversations and, if necessary, to sanction the persons responsible for the shortcomings which had occurred. The Court holds, therefore, that the respondent State did not fulfil its obligation to secure the applicant's right to respect for his private life and correspondence.

Conclusion: violation of Article 8 of the Convention

Conviction of French journalists for handling unlawfully obtained photocopies

Fressoz and Roire v. France [GC] - 29183/95
Judgment 21.1.1999

In 1989, against the background of an industrial dispute in the Peugeot company following the rejection of pay claims by management, Le Canard enchaîné published an article by the second applicant referring to salary increases awarded to the company's Chairman and Managing Director. The article was accompanied by photocopies of extracts from their tax assessments which had been obtained through a breach of professional confidence by an unidentified tax official. The Paris Court of Appeal convicted the applicants of handling the impugned photocopies. Mr Fressoz was fined 10,000 French francs (FRF) and Mr Roire FRF 5,000.

The European Court of Human Rights considered that the information was a matter of general interest: the article had been published during an industrial dispute – widely reported in the press – at one of the major French car manufacturers. The article showed that the company chairman had received large pay increases during the period under consideration while at the same time opposing his employees' claims for a rise. It had not been intended to damage the manager's reputation but to contribute to the more general debate on a topic that interested the public. The Court had in particular to determine whether the objective of protecting fiscal confidentiality, which in itself was legitimate, constituted a relevant and sufficient justification for the interference. Although publication of the tax assessments had been prohibited, the information they contained had not been confidential. Indeed, the remuneration of people who ran major companies was regularly published in financial reviews and the second applicant had said that he had referred to information of that type in order to check roughly how much the manager was earning. Accordingly, there was no overriding requirement for the information to be protected as confidential.

Article 10 of the Convention left it for journalists to decide whether or not it was necessary to reproduce such documents to ensure credibility. It protected journalists' rights to divulge information on issues of general interest provided that they were acting in good faith and on an accurate factual basis and furnished "reliable and precise" information in accordance with the ethics of journalism. Neither Mr Fressoz and Mr Roire's account of the events nor their good faith had been called into question. Mr Roire, who had verified the authenticity of the tax assessments, had acted in accordance with the standards governing his profession as a journalist. The extracts from each document had been intended to corroborate the terms of the article in question. The publication of the tax assessments had thus been relevant not only to the subject matter but also to the credibility of the information supplied. In sum, there had not, in the Court's view, been a reasonable relationship of proportionality between the legitimate aim pursued by the journalists' conviction and the means deployed to achieve that aim.

Conclusion: violation of Article 10 of the Convention

Other Council of Europe relevant resources

1. *Committee of Ministers*

- **Recommendation *Rec(2003)13* of the Committee of Ministers to member states on the provision of information through the media in relation to criminal proceedings**

"Recalling that the media have the right to inform the public due to the right of the public to receive information, including information on matters of public concern, under Article 10 of the Convention, and that they have a professional duty to do so;

Recalling that the rights to presumption of innocence, to a fair trial and to respect for private and family life under Articles 6 and 8 of the Convention constitute fundamental requirements which must be respected in any democratic society;

Stressing the importance of media reporting in informing the public on criminal proceedings, making the deterrent function of criminal law visible as well as in ensuring public scrutiny of the functioning of the criminal justice system;

Considering the possibly conflicting interests protected by Articles 6, 8 and 10 of the Convention and the necessity to balance these rights in view of the facts of every individual case, with due regard to the supervisory role of the European Court of Human Rights in ensuring the observance of the commitments under the Convention;
...
Desirous to enhance an informed debate on the protection of the rights and interests at stake in the context of media reporting relating to criminal proceedings, and to foster good practice throughout Europe while ensuring access of the media to criminal proceedings;
...
Recommends, while acknowledging the diversity of national legal systems concerning criminal procedure, that the governments of member states:

1. take or reinforce, as the case may be, all measures which they consider necessary with a view to the implementation of the principles appended to this recommendation, within the limits of their respective constitutional provisions,
2. disseminate widely this recommendation and its appended principles, where appropriate accompanied by a translation, and
3. bring them in particular to the attention of judicial authorities and police services as well as to make them available to representative organisations of lawyers and media professionals.

- **Appendix to Recommendation Rec(2003)13 - Principles concerning the provision of information through the media in relation to criminal proceedings**

Principle 1 - Information of the public via the media

The public must be able to receive information about the activities of judicial authorities and police services through the media. Therefore, journalists must be able to freely report and comment on the functioning of the criminal justice system, subject only to the limitations provided for under the following principles.

Principle 2 - Presumption of innocence

Respect for the principle of the presumption of innocence is an integral part of the right to a fair trial. Accordingly, opinions and information relating to on-going criminal proceedings should only be communicated or disseminated through the media where this does not prejudice the presumption of innocence of the suspect or accused.

...

Principle 6 - Regular information during criminal proceedings

In the context of criminal proceedings of public interest or other criminal proceedings which have gained the particular attention of the public, judicial authorities and police services should inform the media about their essential acts, so long as this does not prejudice the secrecy of investigations and police inquiries or delay or impede the outcome of the proceedings. In cases of criminal proceedings which continue for a long period, this information should be provided regularly. (...)"

2. *Parliamentary Assembly of the Council of Europe*

- Resolution 1551 (2007) Fair trial issues in criminal cases concerning espionage or divulging state secrets

- Recommendation 1792 (2007) Fair trial issues in criminal cases concerning espionage or divulging state secrets

"the Parliamentary Assembly invites the Committee of Ministers to:

1.1. urge all member states to:

1.1.1. examine existing legislation on official secrecy and amend it in such a way as to replace vague and overly broad provisions with specific and clear provisions, thus eliminating any risks of abuse or unwarranted prosecutions;

1.1.2. apply legislation on official secrecy in a manner that is compatible with freedom of speech and information, with accepted practices for international scientific co-operation and the work of lawyers and other defenders of human rights;

1.2. look into ways and means of enhancing the protection of whistle-blowers and journalists, who expose corruption, human rights violations, environmental destruction or other abuses of public authority, in all Council of Europe member states; (…)"