

Council of Europe Platform for the Protection of Journalism and Safety of Journalists

State reply from Switzerland

Attempts to Silence French Journalist Thomas Dietrich

Switzerland has been informed by the Platform for the Protection of Journalism and Safety of Journalists that on 9 August 2024 an alert was posted concerning Switzerland. The case concerns French investigative journalist Thomas Dietrich, who was ordered by the Geneva Civil Court to withdraw publications exposing alleged corruption in the Republic of Guinea by the Swiss oil trading company Addax Energy SA, as well as to respect a moratorium on further publications on this matter. In further measures, the social media company X Corp. was ordered to make these posts inaccessible in Switzerland.

Switzerland is deeply committed to media freedom and the protection of journalists. We recognise the importance of media freedom and journalistic independence for democracy and the rule of law. For this reason, Switzerland published in 2023 a National Action Plan for the safety of journalists to increase awareness in society and among politicians of the challenges journalists face and the media's fundamental importance as part of an effective democracy in Switzerland. The measures of the action plan are currently being implemented. Most recently, the Swiss Federal Office of Communications (OFCOM) published a study on SLAPPs at the beginning of 2024. Furthermore, Switzerland is a strong advocate of and contributor to the Platform as it is essential for the prevention and redress of human rights violations against journalists.

Media freedom is constitutionally protected by Article 17 of the Swiss Federal Constitution. This is also addressed in the Swiss Civil Procedure Code. Article 266 of the Civil Procedure Code (CPC) provides that the court may order interim measures against periodically published media only if: a. the imminent violation of rights may cause the applicant a particularly serious disadvantage; b. the violation is obviously not justified; and c. the measure does not seem disproportionate. This provision aims to specifically protect media against (*ex-ante*) abusive lawsuits and censorship, but it is limited to periodical media.

In the case of Thomas Dietrich, the injunction is of a super-provisional nature, based on a general legal provision, Art. 265 para. 1 of the Swiss CPC. This means that the court's decision was made urgently in order to permit *ex-parte* interim measures. It is important to highlight that Article 265, al. 2 CPC requires a court hearing or written position from the concerned party after issuing such measures. In addition, a decision on the merits of the case must follow, meaning that the court will consider the allegations at a later date to determine whether the interim measures should be upheld. The case of Thomas Dietrich is consequently still pending before the competent authorities.

Switzerland is a strong advocate for the rule of law and separation of powers, which are cornerstones of the democratic process. The Swiss government will continue to follow the case of Thomas Dietrich closely. However, it is important to highlight that due to the separation of powers, at this point no comments on the legal proceedings can be made and the executive branch cannot intervene in court decisions. Consequently, Switzerland is not in a position to comply with the follow-up actions as they stand at this stage as they are considered incompatible with the separation of powers.

In addition, Switzerland considers that in the given constellation the state cannot be qualified as the source of the threat. Addax Energy SA is a non-state actor using a legal process in Switzerland to advance a claim under existing civil law. The state has not opened proceedings

against Thomas Dietrich, nor does the invoked legal basis of the CPC specifically target journalists. We furthermore refer to the existing practice and similar cases on the platform. For instance, in the alert of April 2022 on Switzerland regarding the satirical paper Vigousse, which also pertains to a case where civil law proceedings (as well as criminal law proceedings) were initiated against a journalist, the Platform correctly categorised the source of the threat as 'non-state'. We would therefore ask the Platform to reconsider the categorisation for the source of threat in this alert.

Switzerland continues to fully support the Platform and is grateful for its important work. The Swiss government is at the disposal of the Platform for any further questions on this matter.