

Press release issued by the Registrar

GRAND CHAMBER JUDGMENT
STOLL v. SWITZERLAND

The European Court of Human Rights has today delivered at a public hearing its Grand Chamber judgment¹ in the case of *Stoll v. Switzerland* (application no. 69698/01).

The Court held, by twelve votes to five, that there had been **no violation of Article 10** (freedom of expression) of the European Convention on Human Rights in respect of the applicant's conviction for publishing "secret official deliberations" concerning compensation due to Holocaust victims for unclaimed assets. (The judgment is available in English and French.)

1. Principal facts

Martin Stoll, a Swiss national who lives in Zürich (Switzerland), is a journalist.

The case concerns the sentencing of the applicant to payment of a fine for having disclosed in the press a confidential report by the Swiss ambassador to the United States relating to the strategy to be adopted by the Swiss Government in the 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.

In December 1996 Carlo Jagmetti, who was then Swiss ambassador to the United States, drew up a "strategy paper", classified as "confidential", in the course of negotiations between, among others, the World Jewish Congress and Swiss banks concerning compensation due to Holocaust victims for unclaimed assets deposited in Swiss bank accounts.

The strategy paper was sent to the person in charge of the matter at the Federal Department of Foreign Affairs in Berne. Copies were sent to 19 other persons in the Swiss Government and the federal authorities and to the Swiss diplomatic missions in Tel Aviv, New York, London, Paris and Bonn. The applicant obtained a copy, probably as a result of a breach of official secrecy by a person whose identity remains unknown.

On 26 January 1997 the Zürich Sunday newspaper the *Sonntags-Zeitung* published, among other things, two articles by the applicant under the headings "Ambassador Jagmetti insults the Jews" and "The ambassador in bathrobe and climbing boots puts his foot in it". The next day the Zürich daily the *Tages-Anzeiger* reproduced extensive extracts from the strategy paper; subsequently, the newspaper the *Nouveau Quotidien* also published extracts from the report.

¹ Grand Chamber judgments are final (Article 44 of the Convention).

On 22 January 1999 the Zürich District Court sentenced the applicant to a fine of 800 Swiss francs (approximately 476 euros) for publishing “secret official deliberations” within the meaning of Article 293 of the Criminal Code. The appeals lodged by the applicant were dismissed at final instance by the Federal Court on 5 December 2000.

The Swiss Press Council, to which the case had been referred in the meantime by the Swiss Federal Council, accepted that publication had been legitimate given the importance of the public debate concerning the assets of Holocaust victims. However, in an opinion dated 4 March 1997, it found that by thus shortening the analysis and failing to place the report sufficiently in context, the applicant had irresponsibly made the ambassador’s remarks appear sensational and shocking.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 14 May 2001 and declared admissible on 3 May 2005.

In its Chamber judgment of 25 April 2006 (press release No. 234, 2006) the Court held, by four votes to three, that there had been a violation of Article 10. At the request of the Swiss Government, the case was referred to the Grand Chamber under Article 43¹ (referral to the Grand Chamber).

The Court granted the French and Slovakian Governments leave to take part in the proceedings as third-party interveners, in accordance with Article 36 § 2 of the Convention (third party intervention) and Rule 61 § 3 of the Rules of Court.

A public hearing was held on 7 February 2007.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Jean-Paul **Costa** (French), ***President***,
Luzius **Wildhaber** (Swiss),
Boštjan M. **Zupančič** (Slovenian),
Peer **Lorenzen** (Danish),
Riza **Türmen** (Turkish),
Margarita **Tsatsa-Nikolovska** (citizen of “the former Yugoslav Republic of Macedonia”),
András **Baka** (Hungarian),
Mindia **Ugrekhelidze** (Georgian),
Anatoli **Kovler** (Russian),
Vladimiro **Zagrebelsky** (Italian),
Antonella **Mularoni** (San Marinese),
Elisabet **Fura-Sandström** (Swedish),

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Renate **Jaeger** (German),
Egbert **Myjer** (Dutch),
Dragoljub **Popović** (Serbian),
Ineta **Ziemele** (Latvian),
Isabelle **Berro-Lefèvre** (Monegasque), *judges*,

and also Vincent **Berger**, *Jurisconsult*.

3. Summary of the judgment¹

Complaint

The applicant submitted that his conviction for publishing “secret official deliberations” had infringed his right to freedom of expression.

Decision of the Court

Article 10

The Court considered that the applicant’s conviction amounted to “interference” with the exercise of his right to freedom of expression. The interference was provided for by the Swiss Criminal Code and had pursued the legitimate aim of preventing the “disclosure of information received in confidence”.

The main question to be examined by the Court, therefore, was whether the interference in question had been “necessary in a democratic society”. In that connection the Court reiterated at the outset that Article 10 was applicable to the dissemination by journalists of confidential or secret information.

The Court noted that the issue of unclaimed assets had not only involved substantial financial interests, but had also had a significant moral dimension which meant that it was of interest even to the wider international community. Consequently, in assessing whether the measure taken by the Swiss authorities had been necessary, the Court would take account of how the public interests at stake had been weighed up: 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.

The Court took the view that the applicant’s articles had been capable of contributing to the public debate on the unclaimed assets, which were the subject of lively discussion in Switzerland at the time. The public therefore had an interest in publication of the articles.

As to the interests which the Swiss authorities sought to protect, the Court considered that 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, the confidentiality of diplomatic reports could not be protected at any price; in that connection, the content of the report and the potential threat posed by its publication had to be taken into account.

¹ This summary by the Registry does not bind the Court.

In the applicant's case the Court considered that the disclosure at that point in time of the extracts from the ambassador's report 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 ambassador's remarks themselves but of the way in which they had been presented by the applicant. Hence the disclosure – albeit partial – 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. The Court therefore concluded that, given that they had been published at a particularly delicate juncture, Mr Stoll's articles had been liable to cause considerable damage to the interests of the Swiss authorities.

As to the applicant's conduct, the Court took the view that, as a journalist, he could not have been unaware that disclosure of the report was punishable under the Criminal Code. It further considered that the content of the applicant's articles had been clearly reductive and truncated and the vocabulary used had tended to suggest that the ambassador's remarks had been anti-Semitic. Hence, the applicant had, in capricious fashion, started a rumour which had undoubtedly contributed to the ambassador's resignation and which related directly to one of the very phenomena at the root of the unclaimed assets issue, namely the atrocities committed against the Jewish community during the Second World War. The Court reiterated the need to deal firmly with allegations and/or insinuations of that nature.

The Court noted that the way in which the impugned articles had been edited, with sensationalist headings, seemed hardly fitting for a subject as important and serious as that of the unclaimed funds. It also observed the inaccurate nature of the articles, which were liable to mislead readers.

In these circumstances, and bearing in mind that one of the articles had been placed on the front page of a Swiss weekly 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 Ambassador Jagmetti's report the subject of needless scandal. The Court took the view that the truncated and reductive form of the articles in question, which was liable to mislead the reader as to the ambassador's personality and abilities, had considerably detracted from the importance of their contribution to the public debate protected by Article 10. Lastly, the Court considered that the fine imposed on the applicant had not been disproportionate to the aim pursued.

Accordingly, the Court held that there had been no violation of Article 10.

Judge Ziemele expressed a concurring opinion and Judge Zagrebelsky, joined by Judges Lorenzen, Fura-Sandström, Jaeger and Popović, expressed a dissenting opinion. Both are annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.