EUROPEAN COURT OF HUMAN RIGHTS

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Press release issued by the Registrar

CHAMBER JUDGMENT IN THE CASE OF ROEMEN AND SCHMIT v. LUXEMBOURG

The European Court of Human Rights has today notified in writing a judgment[1] in the case of ***Roemen and Schmit v. Luxembourg*** (application no. 51772/99). The Court held unanimously that there had been:

● **a violation** of Article 10 (freedom of expression) of the European Convention on Human Rights in respect of the first applicant; and
● **a violation** of Article 8 (right to respect for private and family life) of the Convention in respect of the second applicant.

Under Article 41 (just satisfaction) of the Convention, the Court awarded each applicant 4,000 euros (EUR) for non-pecuniary damage. It also awarded Mr Roemen EUR 11,629.41 for costs and expenses. (The judgment is in French only.)

1. Principal facts

Robert Roemen is a Luxembourg journalist born in 1945. Anne-Marie Schmit was his lawyer in the domestic proceedings. She is a Luxembourg national born in 1963. Both live in Luxembourg.

On 21 July 1998 the daily newspaper *Lëtzëbuerger Journal* published an article by the first applicant entitled "Minister W. convicted of tax evasion" (*Minister W. der Steuerhinterziehung überführt*). The article reported that the Minister had been ordered to pay a tax fine of 100,000 Luxembourg francs (nearly 2,500 euros) for tax evasion and observed that such conduct was all the more shameful coming from a person in the public eye who should set an example. The facts in question were also the subject of comment in other newspapers.

On 4 August 1998 the Minister lodged a criminal complaint, and an investigation was opened in respect of the first applicant for making use of information obtained through a breach of professional confidence and in respect of a person or persons unknown for breach of professional confidence. The prosecutor's application specified that the investigation and

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.

inquiry to be conducted should identify the civil servant or servants in the Land Registry and State Property Office who had handled the file and had had access to the documents.

On 19 October 1998, on the instructions of the investigating judge, searches were carried out at the first applicant's home and place of work to "discover and seize all objects, documents, effects and/or other things which might either help to reveal the truth about the offences mentioned or be used to hinder the satisfactory progress of the investigation". The searches revealed nothing. Considering, among other things, that there had been an infringement of his right as a journalist to protect his sources, the first applicant lodged several applications to set aside the search warrants. Those applications were dismissed, as were the appeals he lodged.

On 19 October 1998 the investigating judge also ordered a search of the first applicant's lawyer's office. A letter seized there had been sent to the Prime Minister by the Director of the Land Registry and State Property Office and bore the hand-written note: "To heads of departments. Confidential information for your guidance". The second applicant lodged an application to set aside the search warrant. Because the report on the search and seizure did not contain the observations of the Vice-Chairman of the Bar, who had been present while they were being carried out, the Committals Division of the District Court declared the seizure void and ordered the letter to be returned to the first applicant. On the day when the letter was returned to her a new search was carried out and the letter was seized again. Submitting, in particular, that there had been a breach of the principle that a lawyer's place of work and the secrecy of communications between a lawyer and his or her client were inviolable, the second applicant lodged an application to set aside the search warrant. Her application was dismissed at first instance and on appeal.

On 30 November 2001 the first applicant was charged with "making use of information obtained through a breach of professional confidence". In January 2003 the investigating judge told him that the judicial investigation had just been closed.

2. Procedure and composition of the Court

The application was lodged on 23 August 1999 and declared partly admissible on 12 March 2002.

Judgment was given by a Chamber of 7 judges, composed as follows:

Nicolas **Bratza** (British), ***President***,
Matti **Pellonpää** (Finnish),
Elisabeth **Palm** (Swedish),
Viera **Strážnická** (Slovakian),
Marc **Fischbach** (Luxemburger),
Josep **Casadevall** (Andorran),
Stanislav **Pavlovschi** (Moldovan), ***judges***,

and also Michael **O'Boyle**, ***Section Registrar***.

3. Summary of the judgment[1]

Complaints

Relying on Article 10 (freedom of expression), the first applicant complained that his right as a journalist to protect his sources had been infringed by the various searches. Relying on Article 8 (right to respect for private and family life), the second applicant complained of unjustified interference with her right to respect for her home on account of the search carried out at her office.

Decision of the Court

Article 10
The Court considered that the searches carried out at the first applicant's home and place of work had indisputably amounted to interference with his right to freedom of expression. The interference, prescribed by Articles 65 and 66 of the Code of Criminal Procedure, had pursued the "legitimate aim" of maintaining public order and preventing crime.

The Court noted that the purpose of the searches in issue had been to find evidence of any persons who might have committed a breach of professional confidence, and of any illegal act subsequently carried out by the first applicant in the performance of his duties. The measures therefore undoubtedly fell within the ambit of the protection of journalists' sources.

In the present case, the first applicant's article had concerned an established fact relating to a penalty imposed on a minister for a tax offence. There was no doubt that the article had discussed a matter of general interest and that an interference could not be compatible with Article 10 of the Convention unless it was justified by an overriding requirement in the public interest. The Court agreed with the first applicant's statement – which, moreover, had not been disputed by the Government – that measures other than searching his home and place of work (such as interviewing civil servants from the Land Registry and State Property Office) could have enabled the investigating judge to identify persons who might have committed the offences referred to in the prosecutor's application. In the Court's view, investigating officers who, armed with a search warrant, burst in on a journalist at his place of work had very wide powers because, by definition, they had access to all the documents in his possession.

In the light of the foregoing, the Court considered 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 reasons adduced by the national authorities could indeed be regarded as "relevant", but not as "sufficient" to justify the searches of the first applicant's home and place of work. The Court therefore held that the measures in issue had been disproportionate and had infringed the first applicant's right to freedom of expression.

Article 8
The Court considered that the search carried out at the second applicant's office and the seizure of the letter had amounted to interference with her right to respect for her private life. The interference had been in accordance with Articles 65 and 66 of the Code of Criminal Procedure, which dealt with searches and seizures in general, and also with section 35(3) of

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

the Law of 10 August 1991, which laid down the procedure for carrying out searches and/or seizures at a lawyer's office. Furthermore, the interference had pursued the legitimate aim of maintaining public order and preventing crime.

As to whether the interference had been necessary, the Court noted that the search had been accompanied by special procedural safeguards. However, it observed that the search warrant had been worded in broad terms, thereby conferring wide powers on the investigating officers. Further, and above all, the Court considered that the purpose of the search had ultimately been to discover the journalist's source through the intermediary of his lawyer. The search carried out at Ms Schmit's office had therefore had repercussions on Mr Roemen's rights under Article 10 of the Convention. The Court further held 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. Accordingly, the Court held that there had been a violation of Article 8 of the Convention.

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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 in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.*