



## An inadequately defined search warrant constituted a breach of freedom of expression and of respect for the home

In today's Chamber judgment in the case of [Saint-Paul Luxembourg S.A. v. Luxembourg](#) (application no. 26419/10), which is not final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been:

**a violation of Article 8 (right to respect for private and family life)** of the European Convention on Human Rights, and

**a violation of Article 10 (freedom of expression)** of the Convention

The 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 Court held 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.

### Principal facts

The applicant, Saint-Paul Luxembourg S.A., is a company with its registered office in Luxembourg.

On 17 December 2008 the newspaper *Contacto*, published by the applicant company, printed an article describing the situation of families who had lost the custody of their children. The article featured the case of a social worker in charge of two adolescents and gave the names of the persons concerned.

The social worker complained about the article to the head of the central social welfare department, who in turn lodged a complaint with the Attorney General, alleging defamation of the social worker in question and of the judicial and social welfare system in Luxembourg generally.

On 30 January 2009 the prosecuting authorities opened a judicial investigation concerning the author of the article for a breach of the legislation on the protection of minors and for defamation.

On 30 March 2009 an investigating judge issued a search and seizure warrant in respect of the registered office of the applicant company, in the latter's capacity as the publisher of *Contacto*. On 7 May 2009 police officers visited the newspaper's premises. The

<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

journalist who had written the article gave them a copy of the newspaper, a notebook and various documents used in preparing the article. According to the police report, the journalist had declared his willingness to cooperate with the police. The latter had handed him a copy of the warrant issued by the investigating judge in order to make clear that, should he refuse to cooperate, they could compel him to do so. The police officers noted that all the items taken away had been handed over to them voluntarily and had served only to exonerate the journalist. The report stated that the protection of the journalist's sources had not been jeopardised at any point. It concluded that the operation had been conducted without any pressure being exerted, in a cordial and respectful atmosphere.

On 10 May 2009 the applicant company and the journalist applied to the District Court to have the warrant set aside and the search and seizure operation declared null and void. The court rejected the application, and the applicant and the journalist appealed. On 27 October 2009 the Court of Appeal upheld the warrant.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), the applicant alleged that the search of the newspaper which it owned and published had infringed the inviolability of its "home" and had been disproportionate. Relying on Article 10 (freedom of expression), the applicant complained of a violation of its freedom of expression, arguing that the measure in question had consisted in an attempt to identify the journalist's sources and had had an intimidating effect.

The application was lodged with the European Court of Human Rights on 26 April 2010.

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

Mark **Villiger** (Liechtenstein), *President*,  
Angelika **Nußberger** (Germany),  
Boštjan M. **Zupančič** (Slovenia),  
Ann **Power-Forde** (Ireland),  
André **Potocki** (France),  
Paul **Lemmens** (Belgium),  
Helena **Jäderblom** (Sweden),

and also Claudia **Westerdiek**, *Section Registrar*.

## Decision of the Court

### Article 8

The Court held that the interference had been intended to establish the actual identity of an individual facing criminal prosecution in the context of a judicial investigation, in this case the journalist who had written the article. The efforts to elucidate the circumstances of a possible offence had pursued the legitimate aim of preventing disorder and crime. The interference had also pursued another legitimate aim, namely the protection of the rights of others, since the article in question had disclosed the names of a social worker and of some minors.

The Court noted that the journalist had written the article under the name Domingos Martins, a name that did not feature as such on the list of officially recognised journalists in Luxembourg. However, the list included the name of De Araujo Martins Domingos Alberto, a journalist working for *Contacto*. The similarity between the names and the link to the newspaper in question made the connection obvious. Accordingly, the

investigating judge could have opted for a less intrusive measure than a search in order to confirm the identity of the article's author. In the Court's view, the search and seizure operation had not been necessary.

As the measures complained of had not been reasonably proportionate to the legitimate aims pursued, the Court held that there had been a violation of Article 8.

### Article 10

The Court considered that the warrant in question had given the police officers access to information which the journalist had not intended for publication and which would have made it possible to identify other sources. The purpose of the warrant had been to search for "and seize any documents or items, irrespective of form or medium, connected with the alleged offences". The Court noted that, as the warrant had been formulated in relatively broad terms, it had conferred quite extensive powers on the investigating officers.

The Court therefore took the view that the search and seizure operation had been disproportionate in so far as it had enabled the police officers to identify the journalist's sources. The warrant of 30 March 2009 had not been sufficiently limited in scope to avoid the possibility of such abuse. Since the sole purpose of the search had been to ascertain the identity of the journalist who had written the article, a more narrowly worded warrant would have sufficed.

The Court held that the search and seizure operation carried out at the applicant company's premises had been disproportionate to the aim pursued and that there had been a violation of Article 10.

### Just satisfaction (Article 41)

The court held that Luxembourg was to pay the applicant 5,635 euros (EUR) in respect of costs and expenses.

*The judgment is available only in French.*

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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.