



Latvian investigating authorities failed to adequately protect journalistic sources in search of well-known journalist's home

In today's Chamber judgment in the case of [Nagla v. Latvia](#) (application no. 73469/10), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the search by the police of a well-known broadcast journalist's home, and their seizure of data storage devices. Her home was searched following a broadcast she had aired in February 2010 informing the public of an information leak from the State Revenue Service database.

The Court emphasised that the right of journalist's not to disclose their sources could not be considered a privilege, dependent on the lawfulness or unlawfulness of their sources, but rather as an intrinsic part of the right to information that should be treated with the utmost caution. In this case the investigating authorities had failed to properly balance the interest of the investigation in securing evidence against the public interest in protecting the journalist's freedom of expression.

Principal facts

The applicant, Ilze Nagla, is a Latvian national who was born in 1971 and lives in Riga (Latvia). During the period when the search and seizure took place she was working for the national television broadcaster *Latvijas televīzija* (LTV), producing and hosting the weekly investigative news programme '*De Facto*'.

On 10 February 2010 Ms Nagla was contacted by an anonymous source who revealed that there were serious security flaws in a database maintained by the State Revenue Service (*Valsts ieņēmumu dienests* – VID), which allowed information concerning the income, tax payments and personal identity details of public officials, private individuals and companies to be accessed. Ms Nagla informed the VID of a possible security breach and then publicly announced the data leak during a broadcast of *De Facto*.

One week after this broadcast, her source, identifying himself as "Neo" began to use Twitter to publish information concerning the salaries of state officials in various public institutions, and continued to do so until 18 April 2010.

The VID had criminal proceedings initiated and on 19 February 2010 the investigating police interviewed Ms Nagla as a witness. She declined to disclose the identity of her

¹ 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

source, citing the right of non-disclosure as set forth in section 22 of the Law on Press and Other Mass Media.

On 11 May 2010 the applicant's home was searched, and a laptop, an external hard drive, a memory card, and four flash drives were seized after a search warrant was drawn up by the investigator and authorised by a public prosecutor. The warrant cited evidence of communication between Ms Nagla and an individual the police suspected was 'Neo', and suggested Ms Nagla may have information concerning the data leaks or the processing, storage and dissemination of information obtained through those leaks. It also noted the possibility that such evidence could be at risk of destruction or concealment to support the application of a special, urgent search procedure whereby the warrant could be retrospectively approved by the investigating judge. This approval was granted on the day after the search of Ms Nagla's home, and was subsequently upheld by the President of the first instance court after the applicant filed a complaint.

In September 2010 the Ombudsman delivered a non-binding opinion in which he concluded that the actions of the investigating authorities had breached Ms Nagla's freedom of expression and her right not to disclose journalistic sources, as enshrined in the national Constitution and international treaties.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Ms Nagla complained that the search of her home meant that she had been compelled to disclose information that had enabled a journalistic source to be identified, violating her right to receive and impart information.

The application was lodged with the European Court of Human Rights on 13 December 2010.

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

David Thór **Björgvinsson** (Iceland), *President*,
 Ineta **Ziemele** (Latvia),
 Päivi **Hirvelä** (Finland),
 Ledi **Bianku** (Albania),
 Vincent A. **de Gaetano** (Malta),
 Paul **Mahoney** (the United Kingdom),
 Faris **Vehabović** (Bosnia and Herzegovina),

and also Françoise **Elens-Passos**, *Section Registrar*.

Decision of the Court

Article 10

The data storage devices seized during the search of Ms Nagla's home contained information capable not only of identifying the source of her information regarding the data leaks, but also her other journalistic sources of information. Therefore the Court did not accept the Government's argument that the search did not relate to journalistic sources, finding that the search at Ms Nagla's home and the information capable of being discovered there came within the sphere of protection under Article 10 of the Convention.

Furthermore, it considered that there had been an interference with Ms Nagla's freedom to receive and impart information. That interference was "prescribed by law" and

pursued the legitimate aims of preventing disorder or crime and protecting the rights of others.

The Court found that the reasons given by the domestic authorities for the search had not been “relevant” and “sufficient”, nor did they constitute a “pressing social need”. The subject matter on which Ms Nagla reported, and in connection with which the search was conducted, made a twofold contribution to public debate. It kept the public informed about salaries paid in the public sector in the context of a climate of economic crisis and austerity, as well as exposing security flaws in the database of the State Revenue Service. The Court emphasised that the right of journalists not to disclose their sources could not be considered a privilege, dependent on the lawfulness or unlawfulness of their sources, but rather as an intrinsic part of the right to information that should be treated with the utmost caution.

Indeed, when the investigating authorities, almost three months after the broadcast and after the applicant had agreed to testify, decided that a search at her home was necessary, they proceeded under the urgent procedure without any judicial authority having properly examined the relationship of proportionality between the public interest of investigation, on the one hand, and the protection of the journalist’s freedom of expression on the other. Taking into account that there was no information linking the applicant to ‘Neo’ in any way other than in her capacity as a journalist and that their communication had stopped on the day of the broadcast, only weighty reasons could have justified the urgency of the search of Ms Nagla’s home.

Moreover, any search involving the seizure of data storage devices belonging to a journalist raised the question of a journalist’s freedom of expression, including source protection, and access to the information contained therein had to be protected by sufficient and adequate safeguards against abuse. Although the investigating judge reviewed the lawfulness of, and grounds for, the applicant’s search after it had actually taken place, as provided for in domestic legislation, that judge failed to establish that the interests of the investigation in securing evidence were sufficient to override the public interest in the protection of the journalist’s freedom of expression, including source protection and protection against the handing over of research material.

There had accordingly been a violation of Article 10.

Just satisfaction (Article 41)

The court held that Latvia was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage, and EUR 10,000 in respect of costs and expenses.

The judgment is available only in English.

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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.