



Protection of journalistic sources does not extend to perpetrator of bomb attacks

In its decision in the case of [Stichting Ostade Blade v. the Netherlands](#) (application no. 8406/06) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned the search of a magazine's premises following a press release it issued announcing that it had received a letter from an organisation claiming responsibility for a series of bomb attacks in Arnhem. Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, the publisher of the magazine complained in particular that the search had amounted to a violation of its right to protect its journalistic sources.

The Court concluded that "source protection" was not in issue in this case as the magazine's informant, who was seeking publicity for the attacks under cover of the press, was not entitled to the same protection as ordinarily accorded to "sources". The search, which had been carried out in order to investigate a serious crime and prevent further attacks, had therefore complied with the requirements under Article 10 of the European Convention, notably of being necessary in a democratic society for the prevention of crime.

Principal facts

The applicant, Stichting Ostade Blade, is a Dutch foundation (*stichting*) possessing legal personality under Netherlands law and domiciled in Amsterdam, the Netherlands. The applicant foundation was responsible for the publication of a fortnightly magazine, "Ravage", geared towards 'an activist and politically engaged audience'.

In the wake of a series of bomb attacks in Arnhem in 1995 and 1996, the editors of the magazine issued a press release announcing that they had received a letter from an organisation claiming responsibility for the latest incident and that they intended to publish the letter in the next edition. In the context of criminal investigations against the perpetrators of the bomb attacks, the premises of the magazine were searched the day after the press release was issued, under the authority of an investigating judge. The editors were informed before the start of the search that it was aimed at retrieving the letter. One of the editors responded that the letter was not on the premises. The search then proceeded. Several computers and other materials were subsequently removed from the premises. An editor of the magazine later reported that the letter had been destroyed the day it was received.

The applicant foundation and one of its editors subsequently brought proceedings before the national courts claiming compensation, which – after being examined by the Regional Court, the Court of Appeal of The Hague and (after remittal by the Supreme Court) the Court of Appeal of Amsterdam – were ultimately dismissed by the Supreme Court in September 2009. The Court of Appeal of Amsterdam did find a partial violation of the applicant foundation's rights under Article 13 (right to an effective remedy) together with Articles 8 (right to respect for private life) and 10 regarding one of the aims of the search, namely to find possible links between the organisation claiming responsibility for the attacks and the magazine. The Amsterdam Court dismissed, however, all the applicant foundation's claims for compensation.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 1 March 2006. The Court has already issued a decision in this case on 5 February 2013 and declared inadmissible for non-exhaustion of domestic remedies complaints brought by one of the magazine's editors.

Relying on Article 10 (right to the freedom of expression), the applicant foundation complained that the search of the magazine's premises had amounted to a violation of its right to protect its journalistic sources. The application foundation also complained of the failure of the domestic courts to award it compensation as a result of the partial finding of a violation of its rights under Article 13 (right to an effective remedy) together with Articles 8 (right to respect for private life) and 10.

The decision was given by a Chamber of seven, composed as follows:

Alvina **Gyulumyan** (Armenia), *President*,
Ján **Šikuta** (Slovakia),
Dragoljub **Popović** (Serbia),
Luis **López Guerra** (Spain),
Johannes **Silvis** (the Netherlands),
Valeriu **Grițco** (the Republic of Moldova),
Iulia Antoanella **Motoc** (Romania), *Judges*,

and also Marialena **Tsirli**, *Deputy Section Registrar*.

Decision of the Court

[Article 10 \(right to freedom of expression\)](#)

The Court found that the search of the applicant foundation's premises had amounted to interference, prescribed by Netherlands law, with the exercise of their right to freedom of expression. The issue turned, however, on what was the nature of the interference and whether it had been justified as "necessary in a democratic society" for the prevention of crime.

In respect of the nature of the interference, the Court found that not every individual who is used by a journalist for obtaining information can be considered a "source" within the meaning of its case-law in this area. The Court observed that the magazine's informant was not motivated by the desire to provide information which the public was entitled to know. On the contrary, the informant was claiming responsibility for crimes which he had himself committed; his purpose in seeking publicity through the magazine was "to don the veil of anonymity with a view to evading his own criminal accountability". For this reason, the Court found that the informant was not, in principle, entitled to the same protection as ordinarily accorded to "sources". The Court thus concluded that "source protection" was not in issue.

Having established that point, the Court went on to find that the search, which was carried out in order to investigate serious crime and prevent further attacks, had complied with the requirements under Article 10 of the Convention, notably of being necessary in a democratic society for the prevention of crime.

[Other articles](#)

The Court found that the applicant foundation's complaints under Article 13 taken together with Articles 8 and 10 had been examined by the domestic courts which had the power to afford them the relief sought. The fact that they did not award compensation was not a material consideration since the effectiveness of a remedy for the purposes of Article 13 did not depend on the certainty of a favorable outcome.

The decision 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.