



A penalty imposed on a journalist for violation of the secrecy of criminal investigations was justified

In today's **Grand Chamber** judgment¹ in the case of [Bédat v. Switzerland](#) (application no. 56925/08) the European Court of Human Rights held, by a majority, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights

The case concerned the fining of a journalist for having published documents covered by investigative secrecy in a criminal case.

The Court found in particular that the publication of an article slanted in the way it had been at a time when the investigation was still ongoing comprised the inherent risk of influencing the conduct of proceedings which had in itself justified the adoption by the domestic authorities of deterrent measures, such as a ban on disclosing confidential information. While accepting that the accused could have had recourse to civil-law remedies to complain of interference in his private life, the Court nevertheless held that the existence in domestic law of remedies to which the accused could have had recourse did not dispense the State from its positive obligation to protect the private life of all persons charged in criminal proceedings. Finally, the Court found that the penalty imposed on the journalist for violation of secrecy, geared to protecting the proper functioning of justice and the accused's rights to a fair trial and respect for his private life, had not amounted to disproportionate interference in the exercise of his right to freedom of expression.

Principal facts

The applicant, Arnaud Bédat, is a Swiss national who was born in 1965 and lives in Porrentruy (Switzerland).

On 15 October 2003 Mr Bédat, a professional journalist, published an article entitled "Tragedy on the Lausanne Bridge" concerning live criminal proceedings against M.B., a motorist who had rammed his car into a group of pedestrians on 8 July 2003, killing three of them and injuring eight, before throwing himself off the Lausanne Bridge. The article described the events and then presented a summary of the questions put by the police officers and the investigating judge and M.B.'s replies. It mentioned that M.B. had been charged with premeditated murder and, in the alternative, with murder, grievous bodily harm, endangering life and serious traffic offences, and that he had shown no remorse. The article was accompanied by several photographs of letters which M.B. had sent to the investigating judge and a summary entitled "He lost his marbles".

M.B. did not lodge any complaint against Mr Bédat, but criminal proceedings were brought against him on the initiative of the public prosecutor for having published secret documents.

On 23 June 2004 the Lausanne investigating judge sentenced the applicant to one month's imprisonment, suspended for one year. The applicant applied to have the decision set aside, and the Lausanne Police Court, by a judgment of 22 September 2005, replaced the prison sentence with a fine of 4,000 Swiss francs (CHF) (approximately 2,667 euros [EUR]).

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

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Mr Bédât appealed on points of law, which appeal was dismissed in January 2006. On 29 April 2008 his public-law appeal and appeal on grounds of nullity were dismissed by the Federal Court.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Mr Bédât complained that his criminal conviction had violated his right to freedom of expression.

The application was lodged with the European Court of Human Rights on 7 November 2008.

In its judgment delivered on 1 July 2014 the Chamber found, by four votes to three, that there had been a violation of Article 10.

On 29 September 2014 the Government requested that the case be referred to the Grand Chamber under Article 43 (referral to the Grand Chamber), and on 17 November 2014 the panel of the Grand Chamber accepted that request. A hearing was held on 13 May 2015.

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

Mirjana **Lazarova Trajkovska** (“the Former Yugoslav Republic of Macedonia”), *President*,
Dean **Spielmann** (Luxembourg),
Josep **Casadevall** (Andorra),
Luis **López Guerra** (Spain),
Mark **Villiger** (Liechtenstein),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Päivi **Hirvelä** (Finland),
Kristina **Pardalos** (San Marino),
Ganna **Yudkivska** (Ukraine),
Vincent A. **de Gaetano** (Malta),
Julia **Laffranque** (Estonia),
Helen **Keller** (Switzerland),
Paul **Mahoney** (the United Kingdom),
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Egidijus **Kūris** (Lithuania),

and also Lawrence **Early**, *Jurisconsult*.

Decision of the Court

Article 10

In its judgment of 1 July 2014 the Chamber noted that Mr Bédât’s conviction had amounted to interference in the exercise of his right to freedom of expression, that the interference was prescribed by law and that it had pursued legitimate aims. The Grand Chamber shared the Chamber’s conclusions on those three points.

As regards the necessity of the interference in a democratic society, the Grand Chamber observed that Mr Bédât’s right to inform the public and the public’s right to receive information came up against equally important public and private interests which were protected by the prohibition of disclosing information covered by the secrecy of criminal investigations. Those interests were the authority and impartiality of the judiciary, the effectiveness of the criminal investigation and the right of the accused to the presumption of innocence and protection of his private life.

Mr Bédard, as a professional journalist, could not have been unaware of the confidentiality of the information which he was planning to publish, which fact he had at no point disputed.

The Court noted that in its judgment of 29 April 2008 the Federal Court had conducted a lengthy assessment of the content of the article in question, concluding that Mr Bédard had confined himself to sensationalism, his modus operandi being exclusively geared to satisfying a relatively unhealthy curiosity. The Court noted that the highly negative picture painted of the accused, the titles used and the close-up photograph left no doubt as to the sensationalist approach which Mr Bédard had adopted in his article, highlighting the vacuity of the accused's statements and his contradictions, which were sometimes described as "repeated lies", concluding that M.B. was "doing all in his power to make himself impossible to defend". But those were precisely the kind of questions which the judicial authorities had had to answer. The Court therefore saw no strong reason to challenge the duly reasoned decision of the Federal Court.

The Court accepted that the subject of the article had been a matter of public interest. However, it noted that the Federal Court had found that the disclosure neither of the records of interviews nor of the letters sent by the accused to the investigating judge had provided any insights relevant to the public debate; the public interest in this case had at the very most involved satisfying an unhealthy curiosity. For his part, Mr Bédard had failed to demonstrate how the fact of publishing the documents in question could have contributed to any public debate on the ongoing investigation. The Court therefore saw no strong reason to substitute its view for that of the Federal Court.

As regards the influence of the article on the criminal proceedings in hand, the Court reiterated that it was legitimate to provide special protection for the secrecy of the investigation in view of the stakes of criminal proceedings, both for the administration of justice and for the right of persons under investigation to be presumed innocent. It emphasised that investigative secrecy was geared to protecting, on the one hand, the interests of the criminal proceedings by anticipating risks of collusion and the danger of evidence being tampered with or destroyed and, on the other, the interests of the accused, notably from the angle of presumption of innocence and more generally his or her personal relations and interests.

In this case the article had been set out in such a way as to paint a highly negative picture of the accused. Publication of an article slanted in that way at a time when the investigation was still ongoing had entailed an inherent risk of influencing the course of proceedings in one way or another. The risk of influencing proceedings justified *per se* the adoption by the domestic authorities of such deterrent measures as prohibition of the disclosure of secret information. The lawfulness of those measures under domestic law and their compatibility with the requirements of the Convention should be capable of being assessed at the time of the adoption of the measures, and not in the light of subsequent developments revealing the actual impact of the publications on the trial. The Federal Court had therefore been right to hold that the records of interviews and the accused's correspondence had been discussed in the public sphere, out of context and in a manner liable to influence the decisions taken by the investigating judge and the trial court.

As regards the infringement of the accused's private life, the Court reiterated that in order to fulfil its positive obligation to safeguard one person's rights to respect for his private and family life (Article 8 of the Convention), the State might have to some extent to restrict another person's rights to freedom of expression (Article 10). In this case the Court considered that the criminal proceedings brought against the applicant by the cantonal prosecuting authorities had been in conformity with the positive obligation incumbent on Switzerland under Article 8 of the Convention to protect the accused person's private life. The highly personal nature of the information disclosed by the article had called for the highest level of protection.

Even though the accused could have had recourse to civil-law remedies to complain of an infringement of his private life, the Court nevertheless considered that the existence of such remedies in domestic law did not dispense the State from its positive obligation to protect the

private life of all persons charged in criminal proceedings. Moreover, at the time of publication of the article in question the accused had been in detention and therefore in a situation of vulnerability, and probably also suffering from mental disorders. That being the case, the cantonal authorities could not be blamed for considering that in order to protect the accused's right to respect for his private life, they could not simply wait until such time as he himself took the initiative of commencing civil proceedings against the journalist.

As regards the penalty imposed on the journalist, the Court found that fining Mr Bédât for violation of secrecy had not amounted to a disproportionate interference in the exercise of his right to freedom of expression. The penalty had been imposed for breach of the secrecy of a criminal investigation and had in this case protected the proper functioning of justice and the accused's rights to a fair trial and respect for his private life. The Court did not consider that that sanction could have had any deterrent effect on the exercise of freedom of expression by Mr Bédât or by any other journalist wishing to inform the general public about ongoing criminal proceedings.

There had therefore been no violation of Article 10 of the Convention.

Separate opinions

Judges López Guerra and Yudkivska each expressed a concurring opinion. These opinions are annexed to the judgment.

The judgment is available in English and 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.