



The conviction of journalists who illegally intercepted radio communications between law-enforcement officers did not infringe their right to freedom of expression

In today's **Chamber judgment**¹ in the case of [Brambilla and Others v. Italy](#) (application no. 22567/09) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the conviction of three journalists who intercepted radio communications between *carabinieri* in order to arrive quickly at crime scenes and report on them for their local newspaper.

Stressing the notion of responsible journalism and noting that the decisions of the domestic courts had been duly reasoned and had focused primarily on the need to protect national security and prevent crime and disorder, the Court found in particular that the courts had made an appropriate distinction between on the one hand the duty of the three journalists to comply with domestic law, which prohibited in general terms the interception by any persons of communications not addressed to them, including those of the law-enforcement agencies, and on the other hand the pursuit of their journalistic activities, which had not been restricted *per se*.

The Court also noted that the penalties ordered by the domestic courts, consisting in the seizure of the radio equipment and the imposition of custodial sentences, had not been disproportionate, as the sentences of the three journalists had been suspended and the authorities had not prohibited them from bringing news items to the public's attention.

Principal facts

The applicants, C. Brambilla, D. De Salvo and F. Alfano, are Italian nationals who were born in 1954, 1976 and 1971 respectively and live in Lecco (Italy).

Mr Brambilla is the director of a local online newspaper in the province of Lecco, while Mr De Salvo and Mr Alfano are journalists working for the newspaper. On 1 August 2002, using radio equipment to intercept the frequencies used by the police and the *carabinieri*, the three journalists gained access to a conversation during which the Merate *carabinieri* operations centre decided to send a patrol to a location where weapons were being stored illegally. Mr De Salvo and Mr Alfano went to the scene immediately. The *carabinieri* decided to search their vehicle and found two pieces of equipment capable of intercepting radio communications between law-enforcement officers. The *carabinieri* later went to the offices of the two journalists and seized two further items of fixed equipment which were tuned to the frequencies used by the *carabinieri*.

Criminal proceedings were instituted against the three applicants. They were acquitted at first instance on 9 November 2004 by the Lecco District Court, which found that the interception of the communications in question did not constitute an offence and that the possession and use of such

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.

equipment was not prohibited. On 15 May 2007 the three journalists were convicted on appeal and received custodial sentences, as the Milan Court of Appeal found that the communications had been confidential and that their interception was punishable under the Criminal Code. However, the applicants' sentences were suspended. The Court of Cassation upheld the Court of Appeal judgment on 28 October 2008, taking the view, among other findings, that the right to press freedom could not take precedence in a case concerning the illegal interception of communications between law-enforcement officers.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the three journalists complained about the search of their vehicle and their offices, the seizure of their radio equipment and their conviction.

The application was lodged with the European Court of Human Rights on 21 April 2009.

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

Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia), *President*,
Guido **Raimondi** (Italy),
Kristina **Pardalos** (San Marino),
Linos-Alexandre **Sicilianos** (Greece),
Paul **Mahoney** (the United Kingdom),
Aleš **Pejchal** (the Czech Republic),
Robert **Spano** (Iceland),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

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

The Court noted that the journalists had not been prohibited from bringing the news items to the public's attention, as their conviction had been based solely on the possession and use of radio equipment intercepting communications between law-enforcement officers, which were confidential under domestic law, in order to access information rapidly.

The Court observed that the decisions of the domestic courts finding that communications between law-enforcement officers were confidential and that the journalists' actions were therefore to be classified as criminal conduct, had been duly reasoned and had emphasised the need to protect national security and prevent crime and disorder.

The Court reiterated that the notion of responsible journalism required that, where journalists acted to the detriment of the duty to abide by ordinary criminal law, they had to be aware that they risked being subjected to legal sanctions, including those of a criminal character. It noted in the present case that the persons concerned, in seeking to obtain information for publication in a local newspaper, had acted in a manner that, according to domestic law and the consistent interpretation of the Court of Cassation, contravened criminal law, which prohibited in general terms the interception by any persons of conversations not addressed to them, including conversations between law-enforcement officers. Furthermore, the journalists' actions had comprised techniques which they used routinely in the course of their journalistic activity.

The Court observed that the penalties imposed on the applicants had consisted in the seizure of their radio equipment and in custodial sentences of one year and three months in the case of the first two journalists and six months in the case of the third, but that their sentences had been suspended. It therefore considered that the penalties had not been disproportionate and that the

courts had made an appropriate distinction between the applicants' duty to comply with domestic law and their pursuit of their journalistic activity, which had not been otherwise restricted.

Accordingly, the Court held that there had been no violation of Article 10 of the Convention.

Separate opinion

Judge R. Spano expressed a concurring opinion which is annexed to the judgment.

The judgment is available only in French.

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Press contacts

echrpres@echr.coe.int | tel.: +33 3 90 21 42 08

Inci Ertekin (tel: + 33 3 90 21 55 30)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

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.