



## Ordering a journalist to give evidence on a source was not justified, even though the source himself had come forward to the police

The case [Becker v. Norway](#) (application no. 21272/12) concerned a journalist, Cecilie Becker, for a daily newspaper who was ordered to give evidence in a criminal case brought against one of her sources, Mr X, for market manipulation. Mr X had confirmed to the police that he had been Ms Becker's source for an article she had written in 2007 about the Norwegian Oil Company's allegedly difficult financial situation. The company's stock decreased after the article. Mr X was subsequently charged with using Ms Becker to manipulate the financial market. Ms Becker refused to testify at any stage of the proceedings against Mr X, and the courts therefore ordered her to testify about her contacts with him, finding that there was no source to protect as he had already come forward. They also considered that her evidence might significantly assist the courts in elucidating the case. Mr X was however convicted as charged before the final decision on her duty to give evidence had been made.

In today's **Chamber** judgment<sup>1</sup> in the case 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 Court found that its assessment turned, above all, on whether Ms Becker's evidence had been needed during the criminal investigation and subsequent court proceedings against her source. It pointed out that her refusal to disclose her source (or sources) had not at any point in time hindered either the investigation or proceedings against Mr X. Indeed, the first-instance court which convicted Mr X had been informed by the prosecutor that no motion for extension (pending a final decision on the duty to give evidence) had been made, because the case had been sufficiently disclosed even without Ms Becker's statement.

It also bore in mind that Ms Becker's journalistic methods had never been called into question and she had not been accused of any illegal activity. Furthermore, her right as a journalist to keep her sources confidential could not automatically be removed because of a source's conduct or because the source's identity had become known.

The Court was not therefore convinced that either the circumstances in the present case or the reasons provided had justified compelling Ms Becker to testify.

### Principal facts

The applicant, Cecilie Langum Becker, is a Norwegian national who was born in 1980 and lives in Oslo (Norway). She is a journalist for *DN.no*, the internet version of the newspaper *Dagens Næringsliv*.

In August 2007 Ms Becker wrote an article about the Norwegian Oil Company, and fears that it might collapse. Her article was based on a telephone conversation with a certain Mr X and a letter he had faxed her which had been written by an attorney, apparently on behalf of bond holders in the oil

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](http://www.coe.int/t/dghl/monitoring/execution).

company, expressing serious concerns about the company's financial situation. It later transpired that the attorney had in fact drafted the letter only on behalf of Mr X, who owned one bond in the company. After publication of the article, the price of the company's stock decreased.

Ms Becker was subsequently questioned in June 2008 by the police and told that Mr X had confirmed that he had been her source. She stated that she was willing to say that she had based her article on the faxed letter, but refused to give additional information, referring to journalistic principles on protection of sources.

In June 2010 Ms Becker's source was indicted for market manipulation and insider trading. During the ensuing criminal case, Ms Becker was summoned as a witness. She refused to testify at any stage of the proceedings, relying on the relevant domestic law on the protection of journalistic sources and Article 10 (freedom of expression) of the European Convention on Human rights. The courts held at first instance that she had a duty to give evidence about her contacts with X. Her appeals were all subsequently rejected, ultimately by the Supreme Court in September 2011. It concluded that, in a situation where the source had come forward, there was no source to protect and the disclosure of his or her identity would therefore have no consequences for the free flow of information. Furthermore, it was a serious criminal case, involving the accusation that Mr X had used Ms Becker to manipulate the bonds market, and her evidence might significantly assist the courts to elucidate the case.

In the meantime, in March 2011, Mr X was convicted at first instance and sentenced to one and a half years' imprisonment. The conviction was upheld in January 2012. In a judgment on the same date, Ms Becker was also ordered to pay a fine of 30,000 Norwegian Kroner (approximately 3,700 euros) for refusing to reply to questions about her contacts with Mr X.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Ms Becker complained about the decision ordering her to give evidence on her contacts with her source, alleging that this would have most likely lead to other sources being identified too. She also argued that, in any case, there had been no real need for her testimony in the case against her source.

The application was lodged with the European Court of Human Rights on 13 March 2012.

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

Angelika **Nußberger** (Germany), *President*,  
Erik **Møse** (Norway),  
Nona **Tsotsoria** (Georgia),  
Yonko **Grozev** (Bulgaria),  
Síofra **O'Leary** (Ireland),  
Mārtiņš **Mits** (Latvia),  
Lətif **Hüseynov** (Azerbaijan),

and also Milan **Blaško**, *Deputy Section Registrar*.

## Decision of the Court

The Court recalled that the degree of protection for journalists as concerned their right to keep their sources confidential depended on both the journalist and the source. As concerned Ms Becker herself, her journalistic methods had never been called into question and she had not been accused of any illegal activity. As for Mr X, he had been found guilty of a serious crime and given a prison sentence, and had even come forward to the police to confirm that he had been Ms Becker's source. This meant that the degree of protection to be applied in this case was not of the same level as that

which could be provided to a journalist who had been assisted by unknown sources on matters of public interest.

However, the Court equally recalled that a journalist's protection could not automatically be removed because of a source's conduct. Nor could knowledge of the source's identity be decisive for its assessment under Article 10 of the Convention.

In the Court's view, its assessment turned above all on whether Ms Becker's evidence had been needed during the criminal investigation and subsequent court proceedings against her source. It pointed out that her refusal to disclose her source (or sources) had not at any point in time hindered either the investigation or proceedings against Mr X. In particular, the prosecuting authority lodged its indictment against Mr X without receiving any information from Ms Becker; the courts were at no point then prevented from considering the merits of the charges; and, in their judgments against Mr X they gave no indication that Ms Becker's refusal to give evidence had given any cause for concern. On the contrary, the first-instance court which convicted Mr X had been informed by the prosecutor that no motion for extension (pending a final decision on the duty to give evidence) had been made, because the case had been sufficiently disclosed even without Ms Becker's statement.

Also bearing in mind its previous judgments emphasising the chilling effect wherever journalists are seen to assist in the identification of anonymous sources, the Court was not therefore convinced that either the circumstances in the present case or the reasons provided had justified compelling Ms Becker to testify. There had therefore been a violation of Article 10.

#### Just satisfaction (Article 41)

The Court held that Norway was to reimburse Ms Becker the fine imposed on her for refusing to give evidence on her source, in the event that it had already been paid.

#### Separate opinion

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

*The judgment is available only in English.*

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#### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

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

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

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

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

**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.