



## Requirement for a journalist to give evidence and disclose the source of her article on drug trafficking was not sufficiently justified

In today's Chamber judgment<sup>1</sup> in the case of [Jecker v. Switzerland](#) (application no. 35449/14) 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 a journalist who complained that she had been compelled to give evidence during a criminal investigation into drug trafficking and that the authorities had required her to disclose her sources following the publication of a newspaper article about a soft-drug dealer who had provided her with information.

The Federal Supreme Court had found that Ms Jecker could not rely on the right to refuse to testify, since trafficking in soft drugs was an aggravated offence. Referring to the balance struck in the legislation between the interests at stake, it held that the public interest in prosecuting an aggravated drug offence outweighed the interest in protecting a source.

The Court pointed out that in view of the importance of the protection of journalistic sources for press freedom in a democratic society, a requirement for a journalist to disclose the identity of his or her source could not be compatible with Article 10 of the Convention unless it was justified by an overriding requirement in the public interest.

In the present case, it was not sufficient for the interference to have been imposed because the offence in question fell within a particular category or was caught by a legal rule formulated in general terms; instead, it should have been ascertained that it was necessary in the specific circumstances. However, the Federal Supreme Court had decided the case with reference to the balancing exercise performed in general and abstract terms by the legislature. Its judgment could not therefore lead to the conclusion that the order for Ms Jecker to give evidence had satisfied an overriding requirement in the public interest.

### Principal facts

The applicant, Nina Jecker, is a Swiss national who was born in 1981. She lives in Basle (Switzerland) and is a journalist.

In 2012 Ms Jecker published an article entitled "Zu Besuch bei einem Dealer" ("Visiting a dealer") in the *Basler Zeitung* regional newspaper. In it she wrote about a drug dealer whose flat she had visited, noting that he had been dealing cannabis and hashish for ten years and made an annual profit of 12,000 Swiss francs.

Following the publication of the article, the public prosecutor opened an investigation. Ms Jecker was asked to give evidence but refused, relying on her right not to testify. The public prosecutor, however, maintained that she was unable to assert that right.

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).

In 2013 the Cantonal Court allowed a request by Ms Jecker not to disclose her sources. The public prosecutor appealed against that decision.

In 2014 the Federal Supreme Court found that Ms Jecker could not rely on the right to refuse to testify, holding that trafficking in soft drugs was an aggravated offence and that her testimony was the only way of identifying the perpetrator of the offence. Referring to the balance struck in the legislation between the interests at stake, the Federal Supreme Court also found that the public interest in prosecuting an aggravated drug offence outweighed the applicant's private interest in protecting her source.

### Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), Ms Jecker complained of an unjustified interference with the exercise of her right as a journalist not to disclose her sources.

The application was lodged with the European Court of Human Rights on 9 May 2014.

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

Paul Lemmens (Belgium), *President*,  
Georgios A. Serghides (Cyprus),  
Helen Keller (Switzerland),  
Alena Poláčková (Slovakia),  
Gilberto Felici (San Marino),  
Erik Wennerström (Sweden),  
Lorraine Schembri Orland (Malta),

and also Milan Blaško, *Section Registrar*.

### Decision of the Court

#### Article 10 (freedom of expression)

The requirement for Ms Jecker to give evidence had amounted to an "interference" with the exercise of her rights under Article 10 of the Convention. The interference was prescribed by the Criminal Code and the Drugs Act<sup>2</sup> and had pursued the aim of "preventing crime".

As to the necessity of the interference in a democratic society, the purpose of requiring Ms Jecker to give evidence during an investigation opened by the public prosecutor had been to establish the possible perpetrator of an offence against the Drugs Act. Ms Jecker had been the only person who could have helped the prosecuting authorities to identify the drug dealer who had provided her with information for her article. There had indisputably been legitimate grounds for prosecuting the dealer. These were undoubtedly relevant considerations. However, the Court found that in order to establish the necessity of disclosing the identity of a source, it was not sufficient to argue that, in the absence of such disclosure, it would not be possible to pursue the criminal investigation.

In assessing the necessity of a measure for the "prevention of crime", account had to be taken of the seriousness of the offences forming the basis for the investigation. In that connection, the Federal Supreme Court and the respondent Government appeared to have attached relatively little weight to the offence at issue in the present case, and had deferred to the choice of the legislature to include it in the catalogue of offences justifying an exception to the protection of sources.

<sup>2</sup> Article 28a, paragraph 2, of the Criminal Code in conjunction with section 19(2)(c) of the Drugs Act.

Furthermore, some significance had to be attached to the fact that the article in question had related to a subject likely to arouse considerable public interest, since it had highlighted the fact that a drug trafficker had been able to remain active for years without being uncovered. On that account, the disclosure order could have had a detrimental impact on the newspaper that had published the article, whose reputation could have been negatively affected in the eyes of future potential sources by the disclosure, and on members of the public, who had an interest in receiving information imparted through anonymous sources.

Thus, having regard to the importance of the protection of journalistic sources for press freedom in a democratic society, a requirement for a journalist to disclose his or her source could not be compatible with Article 10 of the Convention unless it was justified by an overriding requirement in the public interest. In the present case, therefore, it was not sufficient for the interference to have been imposed because the offence in question fell within a particular category or was caught by a legal rule formulated in general terms; instead, it should have been ascertained that it was necessary in the specific circumstances.

In the present case, however, after finding that no particular importance was to be attached either to the public interest or to Ms Jecker's own interest, the Federal Supreme Court had decided the case with reference to the balancing exercise performed in general and abstract terms by the legislature. Its judgment could not therefore lead to the conclusion that the order for Ms Jecker to give evidence had satisfied an overriding requirement in the public interest.

Accordingly, the Court found that the Federal Supreme Court had failed to provide sufficient justification that the measure complained of had corresponded to a "pressing social need". It therefore concluded that the interference with the exercise of Ms Jecker's freedom of expression could not be regarded as necessary in a democratic society, and that **there had been a violation of Article 10 of the Convention**.

#### [Just satisfaction \(Article 41\)](#)

Ms Jecker did not submit a claim for just satisfaction.

*The judgment is available only in 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.