



A journalist's conviction for using information obtained in breach of the secrecy of the investigation did not constitute excessive interference with his freedom of expression

In today's Chamber judgment¹ in the case of [Sellami v. France](#) (application no. 61470/15) 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 a journalist for using information obtained in breach of professional secrecy, following the publication of a composite image produced by the police in connection with an ongoing investigation.

The Court saw no strong reason to question the assessment made by the domestic courts, which had found, firstly, that the interest in informing the public had not justified the use of the item of evidence in question and, secondly, that the publication of the material had had a negative impact on the conduct of the criminal proceedings.

In view of these considerations, and taking into account the margin of appreciation left to States and the fact that the exercise of balancing the competing interests at stake had been properly conducted by the domestic courts, which had applied the relevant criteria under the Court's case-law, the Court concluded that there had been no violation of Article 10 of the Convention protecting freedom of expression.

Principal facts

The applicant, Stéphane Sellami, is a French national who was born in 1972 and lives in Saint-Ouen (France).

On 23 December 2011 two women were raped in Paris, and one of them was also the victim of an attempted killing. The investigation was assigned to the Paris 3rd police district, headed by Superintendent D.

On 28 December 2011 a 15-year-old girl was raped and stabbed in Étampes in the *département* of Essonne. On 30 December 2011 a composite image of the suspect was produced by the forensic identification unit on the basis of the testimony of the third victim.

On 3 January 2012 the Paris public prosecutor opened a judicial investigation concerning all the offences, and on 4 January 2012 the investigating judge issued instructions to the 3rd police district. On the same day Superintendent D., head of the investigating unit, sent an email to his team members informing them that he had received a telephone call from the applicant, who was not to be provided with any information.

On 11 January 2012 the existence of the composite image was disclosed by the magazine *Le Nouveau Détective*. The following day the daily newspaper *Le Parisien* devoted a full page to the

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.

information, publishing three articles written by the applicant in its news in brief section, one of which included the image. On 13 January 2012, following the publication of the articles and in view of the fact that the composite image did not match the suspect who had been identified by photographs in the meantime, the investigating judge and the criminal investigation department decided to issue an appeal for witnesses, publishing a photograph of the individual they were seeking to trace.

On 19 January 2012 Superintendent D. sent a report to his supervisors complaining of a breach of the secrecy of the investigation on account of the publication of the composite image in *Le Parisien* on 12 January 2012. The public prosecutor ordered an investigation concerning a breach of the secrecy of the investigation.

In a judgment of 21 November 2012 the Paris Criminal Court found the applicant guilty of using information obtained in breach of professional secrecy and ordered him to pay a fine of 8,000 euros (EUR), together with one euro in damages to the victims who had joined the proceedings as civil parties. In a judgment of 16 January 2014 the Paris Court of Appeal upheld the first-instance judgment as to the finding of guilt, but reduced the sentence to a fine of EUR 3,000. The Court of Cassation dismissed an appeal on points of law lodged by the applicant.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant maintained that his conviction for using information obtained in breach of professional secrecy, following the publication of a composite image produced by the police in connection with an ongoing investigation, had been contrary to the Convention.

The application was lodged with the European Court of Human Rights on 5 December 2015.

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

Síofra O’Leary (Ireland), *President*,
Ganna Yudkivska (Ukraine),
Stéphanie Mourou-Vikström (Monaco),
Latif Hüseyinov (Azerbaijan),
Jovan Ilievski (North Macedonia),
Arnfinn Bårdsen (Norway),
Mattias Guyomar (France),

and also Victor Soloveytchik, *Section Registrar*.

Decision of the Court

Article 10

After noting that there had been interference with the applicant’s exercise of his right to freedom of expression, the Court observed that it had previously held that the conviction of a journalist for using information obtained in breach of professional secrecy, under Article 321-1 of the Criminal Code, satisfied the requirement of foreseeability of the law for the purposes of Article 10 of the Convention ([Dupuis and Others v. France](#), § 31; [Hacquemand v. France](#); and [Ressiot and Others v. France](#), §§ 107-108). As it saw no reason in the present case to depart from that finding, the Court concluded that the interference in question had been “prescribed by law” within the meaning of the second paragraph of Article 10 of the Convention.

The Court had also ruled previously that interference based on the need to safeguard the secrecy of the judicial investigation was aimed at ensuring the proper conduct of the investigation and thus

maintaining the authority and impartiality of the judiciary. This also applied where the case concerned professional secrecy designed to prevent the disclosure of confidential information. In the present case the interference had been based on the need to ensure the requisite confidentiality of information concerning the conduct of a criminal investigation and, more generally, to maintain the authority and impartiality of the judiciary. It had therefore pursued a legitimate aim.

As to the necessity of the interference and the case-law criteria that were applicable, the Court noted that the domestic courts had taken the view that the applicant, a journalist by profession, could not have been unaware that the composite image which he possessed and was planning to publish was covered by the secrecy of the investigation. In its judgment of 16 January 2014 the Court of Appeal had observed that the telephone call which the applicant had admitted making to Superintendent D. confirmed the fact that he was aware that a judicial investigation had been opened and that the composite image which he had obtained formed part of the case file.

With regard to the article in *Le Parisien*, the Court noted that the publication of the image in question, together with a short caption commenting on it, had been part of a set of articles written by the applicant, covering an entire page, on the subject of a series of rapes and assaults apparently carried out by the same perpetrator. The layout had given particular prominence to the composite image. In line with the assessment of the domestic courts, the Court considered that these editorial choices left no doubt as to the sensationalist approach taken by the applicant.

Moreover, the Court stressed the fact that by the time it was published the image in question, which had been produced originally on the basis of a description provided by just one victim, no longer matched the description of the alleged perpetrator, as the investigators had obtained several photographs of the suspect in the meantime. The domestic courts had therefore correctly found that, in publishing the composite image, the applicant had presented it as matching the description of the serial rapist, without concern for its reliability or for the impact on the ongoing judicial investigation, in breach of the duties and responsibilities entailed in the exercise by journalists of freedom of expression.

The Court acknowledged that the subject of the article, namely the criminal investigation into a series of rapes and knife attacks on women in Paris and the surrounding suburbs, had been a matter of public interest. Firstly, however, the sensationalist way in which the image was presented had been designed primarily to satisfy the public's curiosity; secondly, the information disseminated had been inaccurate and had been bound to mislead the reader.

Accordingly, the Court could discern no strong reason to question the assessment made by the domestic courts in finding that the interest in informing the public had not justified the use of the composite image.

Furthermore, the Court reiterated that it was legitimate for special protection to be afforded to the secrecy of a judicial investigation, in view of what was at stake in criminal proceedings, both for the administration of justice and for the right of persons under investigation to be presumed innocent. The present case related more specifically to ensuring the requisite confidentiality of information concerning the conduct of a criminal investigation, in order to maintain the authority and impartiality of the judiciary.

The risk of influencing proceedings justified *per se* the adoption by the domestic authorities of deterrent measures such as prohibiting the disclosure of secret information.

In the present case the domestic courts had taken the view that the publication of the article in question had interfered with the normal conduct of the investigations, observing that the publishing of the image had been interpreted by some readers as an appeal for witnesses. This had resulted in a large volume of telephone calls to the police and had prompted the investigating judge and the criminal investigation department, the day after the article had appeared, to launch an appeal for witnesses accompanied by a photograph of the man they were seeking to trace. The domestic courts

had noted that the journalist in question had knowingly interfered in the conduct of the investigation, which had been at its most delicate stage, that of identifying and apprehending the suspect. The Court could discern no strong reason to question the assessment that the publication of the material had had a negative impact on the conduct of the criminal proceedings.

As to the financial penalty imposed, the Court considered that the recourse to criminal proceedings and the penalty imposed on the applicant – a fine of EUR 3,000 instead of the amount of EUR 8,000 originally ordered by the Criminal Court – had not amounted to disproportionate interference with the exercise of his right to freedom of expression. In the Court's view, it could not be maintained that such a penalty was liable to have a deterrent effect on the exercise of freedom of expression by the applicant or any other journalist wishing to inform the public about ongoing criminal proceedings.

In view of the margin of appreciation available to States and the fact that the exercise of balancing the various competing interests had been properly conducted by the domestic courts, which had applied the relevant criteria under its case-law, the Court concluded that there had been no violation of Article 10 of the Convention.

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.