The Protection of Journalistic Sources under Article 10 of the European Convention

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Abstract

The European Court of Human Rights has repeatedly affirmed the importance of journalistic sources. The protection of journalistic sources is a prerequisite for freedom of expression, which is fundamental to a democratic society. Journalistic sources are persons who are in possession of important information which is of interest to the public and who pass it on to journalists so that they can report on it. Under Article 10 of the European Convention on Human Rights, journalists have a right to protect the identity of their journalistic sources. Without such protection, journalistic sources could be discouraged from assisting journalists in informing the public.

This study examines whether or not the protection of journalistic sources in terms of Article 10 of the European Convention is absolute, and explores the main principles established by the case law of the European Court of Human Rights to protect journalistic sources. It also examines the provisions for the protection of journalistic sources within the Maltese Law.

Through a doctrinal legal research and case law analysis of seventeen judgments of the European Court of Human Rights, this research established that the protection of journalistic sources in terms of Article 10 of the European Convention is not absolute, however, the European Court affords a high level of protection over journalistic sources and it interprets this right restrictively. Through the jurisprudence of the European Court a number of principles has been identified which have been explored in this dissertation. Furthermore, it was found that the protection of journalistic sources in Malta is a relatively new concept that has yet to be developed.

Keywords – European Court of Human Rights; Journalistic Sources; Journalism; European Convention; Malta.

Dedicated to my late grandmother, Rosina.

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List of Abbreviations

ECHR- European Convention on Human Rights
ECtHR – European Court of Human Rights
ELF - Earth Liberation Front
MFSA - Malta Financial Services Authority
OLAF - European Anti-Fraud Office

1. Introduction

1.1. The Importance of Journalistic Sources

Freedom of expression is an important foundation for a democratic society, which requires the greatest possible protection. Therefore, the protection of journalistic sources is a basic requirement for freedom of the press. Journalistic sources are persons who acquire news-related knowledge which they pass on to journalists in order to inform the public. They are important to journalists because sources provide them with information that they may have missed, and they make their articles more credible. They are also important to the public because sources keep them informed. Some sources require journalists to keep their identities anonymous. Their motivation might be to protect themselves from the consequences that might follow after the report is published.

Without reliable protection, such journalistic sources could be discouraged from disclosing information of public interest to journalists, which would result in an impediment to the right to freedom of the press, as it would affect the ability of the press to provide accurate and reliable information to the public. The European Court of Human Rights (ECtHR) has consistently reiterated in its case law the importance of journalistic sources under Article 10 in order for the press to fulfil its role as a "public watchdog" and has pointed to the potentially chilling effect that disclosure orders have on press freedom.[1]

The Court has stated that the right of journalists not to reveal their sources is not a mere privilege, but an integral part of the journalist's right to inform, which must be respected.[2] Any restriction on this right of the journalist must be carefully considered and must outweigh the public interest in protecting journalistic sources.[3]

[1] *Goodwin v. United Kingdom* App no 17488/90 (ECHR 27 March 1996)
[2] *Tillack v. Belgium* App no 20477/05 (ECHR 27 November 2007).
[3] (n 1).

1.2. The Focus of the Study

The focus of the study is to identify the level of protection actually provided by the Council of Europe through its instruments and the case law of the ECtHR on the protection of the right of journalists not to disclose their journalistic sources, through a case-law analysis. It also examines the Maltese Legislation and the protection it affords to journalists in relation to their sources in order to include a local perspective.

As important as the right to journalistic sources is, no other previous study, to our knowledge, has examined the entire jurisprudence and instruments of the ECtHR on the protection of journalistic sources to determine the level of protection that the Court actually provides. Therefore, this study undertakes an overarching analysis of all Council of Europe materials relating to the protection of journalistic sources. Furthermore, Malta's current ranking in the World Press Freedom Index is worrying, so it is interesting to examine Malta's situation in relation to its journalistic sources.

1.3. Methodology

1.3.1. Research Question

The main research question that this study answers is: Is the protection of journalistic sources absolute in terms of Article 10 of the European Convention?

In this study, the research question is based on Article 10 of the European Convention, so the European Convention and the case law of the ECtHR are the main sources to determine an answer to the research question. The protection of journalistic sources is the theme of the study and everything in this dissertation is based and focused on all material related to the protection of journalistic sources under Article 10 of the Convention.

1.3.2. Research Aims and Objectives

The question aims to determine whether or not the protection of journalistic sources is absolute in terms of Article 10 of the European Convention. The aim of this study, in addition to determining whether the protection is absolute or not, is to find out what level of protection the Court grants to journalists who are ordered to disclose their sources, either through a direct order or through investigative measures that could reveal the identity of their sources, whether the protection varies depending on the circumstances of the case, and to identify the main issues relating to the protection of journalistic sources that have emerged from the case law of the ECtHR and what the Court has said about each issue. In addition, the protection of journalistic sources in Malta will also be examined in order to provide an understanding of the protection which is afforded locally.

The objective of the research is to gather all the information on the protection of journalistic sources within the Council of Europe in one study. Considering the importance of journalistic sources, it is important for lawyers to have easy access to such information. Furthermore, the study aims to provide a deep understanding of the protection of journalistic sources within the Council of Europe through the case law of the ECtHR.

1.3.3. Research Method

The research methods used in this dissertation are based on qualitative research methods. This dissertation is based on an analysis, therefore case law analysis is the central method used in this dissertation so as to provide an in-depth understanding of the case law of the ECtHR on the protection of journalistic source. The second method of analysis that has been used is doctrinal legal research, through which the relevant instruments of the Council have been analysed, as well as the European Convention and the Maltese Legislation.

1.3.3.1. Case Law Analysis

Cases are the key to demonstrating the law in action. Therefore, case law analysis is the central research method of this dissertation, as it demonstrates how the ECtHR interprets Article 10 of the Convention in practice to determine the level of protection it affords to journalistic sources.

The selected cases all relate to the protection of journalistic sources and are also interrelated. Nevertheless, they present different perspectives and principles due to the particular circumstances of each case. The judgments and decisions made by the Court in each case bring out and build upon the provisions of Article 10 and the instruments created by the Council to protect journalistic sources.

1.3.3.2. Doctrinal legal research

This dissertation also examines the letter of the law through the method of doctrinal legal research method. This method was chosen in order to provide a deep understanding through the analysis of what the law of the Convention, the Council's instrument and the Maltese legislation say in relation to the protection of journalistic sources.[4]

1.3.4. Limitations

The main limitation of this study was the number of words. Given the amount of cases which had to be analysed, the limited word count affected the analysis of the cases as they had to be kept short to leave room for other relevant material to be analysed. However, this gave the opportunity to include as much relevant material as possible to support the final answer in this dissertation.

[4] Amrit Kharel, 'Doctrinal Legal Research' (2018) SSRN Electronic Journal.

2. Analysis of the Protection of Journalistic Sources under Article 10 of the European Convention on Human Rights and Fundamental Freedoms

2.1. Introduction

Article 10 sets the ECtHR is very aware of the significance of this right, and thus, any limitations pertaining to it are thoroughly analysed through a three-part test. However, the Court does not fail to mention that Article 10 includes duties and responsibilities that must be observed.

The protection of journalistic sources also falls under this Article. As the Court itself stated, the protection of journalistic sources is a fundamental principle of Article 10. The role of the source is significant, enabling journalists to report information of public interest. Interference with the right of journalists to protect their journalistic sources might cause a chilling effect which could discourage potential sources from passing on vital information to journalists thereby impeding freedom of expression.

This analysis examines the related instruments of the Council of Europe and the case-law of the European Court of Human Right in relation to the protection of journalistic sources in order to establish whether the protection of journalistic sources under Article 10 is absolute, and provide an understanding of its definition through the jurisprudence of the ECtHR. Seventeen Court judgements are analysed, and the main principles which have been established from these judgements are further discussed to give a collective understanding of the protection afforded by the Court.

This analysis also examines the protection of journalistic sources under Maltese legislation. It follows the progression of the protection of journalistic sources in Malta, and views the lawful limitation to this protection found under Maltese law. Moreover, the analysis concludes by reviewing local cases on disclosure orders to journalists, forcing them to reveal their journalistic sources.

2.2. Article 10

Article 10 of the European Convention States:

> *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.*
>
> *2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*[5]

When expressing its interpretation of this Article, the Court has on several occasions emphasised its importance, stating that freedom of expression is one of the fundamental bases of democratic societies.[6] It has also acknowledged the important role of the press in democratic States which are headed by the rule of law.[7] It has further not failed to mention that the Article has its exceptions, which must be restrictively interpreted, while any limitations to the Article must demonstrate credible reasoning.[8]

The Article does not only stand on its own, but on occasion, it also relates to other Articles of the Convention. It could additionally clash with other rights, such as, the right to respect for private life. When this happens, the Court's role is to strike a balance between the two by considering conflicting interests, the particular circumstances of each case, and by examining the means used and the aim which was pursued.[9]

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[5] Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human
Rights, as amended) (ECHR).

[6] Council of Europe: European Court of Human Rights, Guide on Article 10 of the European Convention on Human Rights.

[7] Dominika Bychawska-Siniarska, *Protecting the Right to Freedom of Expression Under the European Convention on Human Rights: A Handbook for Legal Practitioners* (Council of Europe 2017).

[8] (n 6).

[9] (n 7).

The States also have positive obligations to protect the implementation of this right. Such positive obligations require the States to institute practical mechanisms to safeguard this freedom. The Court has also declared that such positive obligations are necessary to prevent attacks on journalists and other persons exercising their right to freedom of expression.[10]

The protection of Article 10 is not limited to the use of any medium of expression, but it has been given a wide scope of interpretation, including all forms and mediums which convey ideas, information, and other types of expression. Moreover, advertisements also fall under its scope. The Court has further considered acts of protests, including boycotts, as a form of expression protected by Article 10.[11]

The Article in itself carries with it duties and responsibilities which must be observed by anyone exercising one's freedom. Such responsibilities are imposed for example on civil servants who, when exercising their freedom of expression, are requested by the State to fulfil the duty of discretion on account of their status. However, their right must not be subject to severe restrictions that could annul the right, but it must be limited and founded upon the same criteria which examine the infringement of freedom of expression.[12]

Article 10 is divided into two parts. The first paragraph of the Article explains and defines the freedoms which are and should be safeguarded, including the freedoms of holding an opinion and of receiving and imparting information and ideas. The second paragraph lays down the circumstances in which a State may legally restrict the practice of freedom of expression.[13]

The Court is very strict and cautious in accepting interference with freedom of expression; hence, it has established a three-part test to examine such interference. The

[10] (n 6).
[11] (n 6).
[12] (n 7).
[13] (n 7).

Court only accepts any interference as legitimate when it finds the interference to be prescribed by law, when it is sought to protect one or more of the interests or values mentioned in the second paragraph of Article 10, and finally, it has to be necessary in a democratic society. All three requirements must be fulfilled, and where the Court finds that the State failed to satisfy one of the three requirements, the Court would instantly find a violation of Article 10 as the interference would be considered unjustified, and thus, it would not examine the case any further.[14]

One of the possible interferences with the exercise of freedom of expression is an order to disclose a journalistic source and disciplinary action on journalists who refuse to do so.[15] Therefore, this section of the Article addresses the protection of journalistic sources.

2.3. Article 10 and the Protection of Journalistic Sources

Freedom of the press relies on the protection of journalistic sources. In the absence of such protection, sources which are a great asset for journalists to bring forward information to the public would be deterred from assisting journalists in affairs of public interest, potentially creating a chilling effect. Consequently, this would affect the ability of the press to report accurate and well-grounded information while exercising their key role of 'public watchdog'.[16]

The protection of journalistic sources is taken very seriously by the European Court as it values the significance of such sources to press freedom and considers the chilling effect of disclosure orders. In fact, it was the Court which established, through its case-law, that disclosure of journalistic sources and the effect that would have for press freedom in a democratic society, "cannot be compatible with Article 10 of the Convention unless it is justifies by an overriding requirement in the public interest".[17]

[14] (n 7).
[15] (n 7).
[16] (n 6).
[17] (n 1).

The Court calls for the utmost careful examination of limitations to the non-disclosure of sources. It only justifies interference with the protection of journalistic sources under Article 10 by an overriding requirement in the public interest.[18]

The Court delivered one of its first judgements on the protection of journalistic sources in the Goodwin case, where it emphasised the importance of the protection of the sources as, without such protection, vital sources may be discouraged from informing the press on public interest affairs. Moreover, the case highlights the high level of protection which the Court affords to journalistic sources.[19]

The cases analysed below show the level of protection and consideration given by the Court to disclosure of journalistic sources in its case-law. The Court has rigorously maintained that the right of journalists to not disclose their sources is not simply a privilege that could be afforded or taken away according to the legitimacy of the source in question, but it is rather a right which must be treated with vigilance.[20]

2.4. Instruments of the Council of Europe

In the judgements it delivers in cases related to the protection of journalistic sources that fall under Article 10, the Court is assisted by several instruments which the Council of Europe has adopted over the years to provide guidance to the Court and to its Member States.

2.4.1. Recommendation No. R (00) 7 on the right of journalists not to disclose their sources of information

[18] (n 6).
[19] (n 7).
[20] (n 6).

The Committee of Ministers adopted Recommendation No. R (00) 7 on the right of journalists not to disclose their sources of information following the Goodwin judgements. The recommendation elaborates further on the interpretation of Article 10 on the protection of journalistic sources and the principles which the Court established in its judgement in the Goodwin case. It addresses the Member States to assist them in providing a collective European basic standard of rights in relation to journalists' right to not disclose their sources of information.[21]

The Recommendation gives a list of definitions, and defines a source as, 'Any person who provides information to a journalist'. Moreover, for the purpose of protecting the source, it states that any type of information about the source that might reveal their identity must also be protected.[22]

The Recommendation establishes a set of seven common principles for journalists' right to not disclose their sources of information in view of Article 10. It additionally elaborates on the meaning of the limitations to Article 10 which are listed in its second paragraph.[23] The first principle established in the Recommendation is for the States to set a secure level of protection in their domestic law through clear and precise legislation for the right of journalists to not disclose their sources. Through the second principle, the protection of non-disclosure is extended to more than simply journalists, but it also includes others who are also involved in the media sector, and through the framework of their profession relating with journalists, acquire knowledge or might have access to the identity of the source, including for instance printing staff or editors.[24]

The third principle outlines the necessary requirements that must be fulfilled for limitations to the right of non-disclosure under Article 10 to be deemed lawful, namely:
1. Limitation must be prescribed by law

[21] Council of Europe Committee of Ministers, Recommendation No. R (00) 7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information (Adopted by the Committee of Ministers on 8 March 2000 at the 701st meeting of the Ministers' Deputies).
[22] ibid 21.
[23] (n 21).
[24] (n 21).

2. The disclosure must be necessary, and the following considerations must be taken into account when examining the necessity of the disclosure:

2.1. Whether alternative means to achieve the legitimate interest were exhausted unsuccessfully before proceedings leading to disclosure orders were initiated.

2.2. The prevailing requirement of the legitimate interest over the disclosure order, with a legitimate interest being taken to include the 'protection of human life', 'prevention of major crime', and 'defence of a person accused or convicted of having committed a major crime'.[25]

Principle four is derived from the judgement of the European Court in the De Haes and Gijsels v. Belgium case on defamation, through which it was established that national authorities should look for and consider other alternative evidence, rather than requesting a journalist to disclose a source. This is also what the Recommendation puts forward in this principle.[26]

Principle five of the Recommendation outlines five conditions on disclosure orders:

1. Disclosure orders must be made by persons who have a 'direct legitimate interest in the disclosure'.

2. Journalists must be fully informed of their right to not disclose their sources before being requested to disclose their sources.

3. Sanctions of journalists for not disclosing their sources should only be ordered by judicial authorities on the basis of Article 6 of the Convention.

4. Sanctioned journalists should be given the possibility to have the sanction imposed on them reviewed by another judicial authority.

5. If a disclosure order to identify a source is requested, the negative impact of such an order must be kept to a minimum.[27]

[25] (n 21).
[26] (n 21).
[27] (n 21).

Principle six addresses forced disclosure tactics. It states that journalists are also protected from having their communications and correspondences intercepted, surveilled, searched, or seized for the purpose of disclosing their sources. The principle further states that, if the authorities obtain information about a source through the actions mentioned, such information should not be used as evidence before the Courts, unless they are lawful and justified under the third principle.[28]

The last principle on the 'protection against self-incrimination' stipulates that journalists also have the right to not give evidence which might incriminate them, apart from the right to not disclose their sources of information in cases of criminal charges they might face.[29]

2.4.2. Parliamentary Assembly of the Council of Europe Recommendation 1950 (2011) entitled 'The protection of journalists' sources' of 25 January 2011

The Parliamentary Assembly of the Council of Europe adopted a recommendation text to its Member States in 2011 on the protection of journalistic sources. In the text, the PACE notes the growing number of cases on disclosure orders of sources of information, and observes that such cases are more frequent in Member States which do not have clear legislation on the protection of journalistic sources. Therefore, the PACE recommends to the Committee of Ministers to appeal to these Member States to establish specific legislation on the matter in conformity with ECtHR case-law and Recommendation No. R (00) 7 on the right of journalists not to disclose their sources of information. It further recommends to the Committee of Ministers to provide assistance to the concerned Member States to refine their legislation on the protection of journalistic sources.[30]

[28] (n 21).
[29] (n 21).
[30] Council of Europe Parliamentary Assembly, Recommendation No. 1950 (2011) of the Parliamentary Assembly on the Protection of journalists' sources (Adopted by the Assembly on 25 January 2011 at the 4th Sitting).

Moreover, it requests its 'competent steering committee' to formulate a set of 'guidelines for prosecutors and the police, as well as training material for judges' in accordance with the advice of the competent organisations and Committee of Ministers Recommendation No. R (2000) 7 and Rec (2003) 13, as well as the case-law of the ECtHR. It additionally urges for the formulation of guidelines on the protection of the confidentiality of journalists' sources for public authorities and private service providers on cybercrime.[31]

[31] ibid 30.

3. Case-Law of the European Court of Human Rights

3.1. Introduction

The European Court of Human Rights was set up in 1959 by the European Convention. The Court has a supervisory function, and it has a jurisdiction to settle complaints on allegations of violation of the European Convention. Its jurisdiction is compulsory; thus, all the Contracting States are answerable to the Court, whose decisions and judgements which find a violation of the Convention are binding on the States concerned. In some cases, where a violation of the Convention is found, the State concerned must amend its legislation so as to conform with the Convention.[32]

The judgements delivered over the years by the European Court of Human Rights on the protection of journalistic sources are a great reference, demonstrating how the European Court applies and interprets Article 10 of the Convention to protect journalistic sources.

3.2. Judgements Analysis

3.2.1. Goodwin v. the United Kingdom

The landmark judgement in the Goodwin v. the United Kingdom case is one of the first where the Court had to decide on an order of disclosure of journalistic sources. The case concerns Mr. Goodwin, who was a trainee journalist at the time, who was contacted by a source over the telephone who wished to remain anonymous. The source gave him confidential information about the financial problems of the company called Tetra. The applicant contacted Tetra to clarify the facts of the story before publishing the article. Tetra believed that the information was derived from a stolen draft of its confidential Corporate Plan which had disappeared a few days earlier. Tetra took action and

[32] Georg Ress, 'The Effect of Decisions and Judgments of the European Court of Human Rights in the Domestic Legal Order' (2005) 40 Texas International Law Journal.

obtained an ex parte interim injunction which restrained any information derived from the missing document from being published as it would have caused financial damage to the company, as well as the unemployment of 400 employees. Moreover, Tetra pursued an order for the disclosure of Mr. Goodwin's notes of his conversation with the source so as to discover the latter's identity and consequently bring Court proceedings against this person. The applicant continuously refused, and appealed to the House of Lords, but his appeal was dismissed. The Domestic Courts found that the danger of serious financial damage to the company outweighed general public interest in protecting journalistic sources.[33]

The applicant lodged a complaint to the European Commission, stating that the disclosing order constituted an interference with his right to freedom of expression guaranteed under Article 10 of the Convention. The Commission agreed with the applicant, and stated that such disclosure had a 'potential chilling effect' on individuals who would be willing to assist journalists.[34]

The government argued before the Commission that the purpose of the restriction was to protect the rights of Tetra from severe business damage. The Commission accepted this argument; thus, the purpose served a legitimate aim.[35]

As for the necessity of the interference, the Commission began by stating that the enforcement on journalists to disclose their sources should only be applied in exceptional cases, where important public or individual interests are in danger. With regards to the case in question, the Commission found that, due to the injunction which restrained any information about the information derived from the Corporate Plan from being published, the risks which the House of Lords feared, namely, severe damage to Tetra's business and job losses, were minimal, and there was no evidence that the source had passed information to customers or to the company's competitors. Moreover, despite the continuing anonymity of the source, the Company did not suffer

[33] (n 1).
[34] (n 1).
[35] (n 1).

any harm which the Domestic Courts had predicted, and the information which the applicant had obtained was similar to articles found in the business press. Therefore, the facts of this case were not considered to be exceptional circumstances that justify a disclosure order of journalistic sources.[36]

The case was referred to the ECtHR, which found that the interference was prescribed by law, and focused on the necessity of the interference under Article 10(2). In this judgement, the Court made significant statements which shaped following judgements on the protection of journalistic sources. It emphasised the importance of the protection of journalistic sources in democratic societies as such protection is fundamental for press freedom, as well as the chilling effect of a disclosure order on potential sources and on the exercise of freedom of expression.[37]

In the Court's opinion, the injunction was enough to safeguard Tetra against the fears raised by the Domestic Courts on the livelihood of 400 employees and threat to Tetra's business. Therefore, the disclosure order did not make any developments as it had the same results.[38]

After balancing the two competing interests and rights, the Court concluded that Tetra's interests, that is, revealing the source and proceeding against them, eliminating any threat to its business, and discovering the disloyal employee, were not enough to outweigh the vital public interest of protecting journalistic sources; hence, a violation of Article 10 was found.[39]

This case showcases the high level of protection with which the Court is willing to safeguard journalistic sources from being disclosed. It made it clear that protecting property rights is not considered by the Court to be sufficient to outweigh public interest

[36] (n 1).
[37] (n 1).
[38] (n 1).
[39] (n 1).

in protecting journalists' sources,[40] and made it difficult to anticipate which circumstance could outweigh it. Moreover, it showed that the margin of appreciation of the States is limited.

One could argue that the Court failed to consider and analyse the circumstances of the large number of persons who were at risk of losing their employment to safeguard the rights of one individual.[41] This is a testimony of the high level of protection which the Court is willing to give to journalistic sources.

3.2.2. Nagla v. Latvia

The case of Nagla v. Latvia concerns measures of search and seizures. The applicant who hosted a TV programme received information through email from a source who wished to remain anonymous about 'serious security flaws' on the State Revenue Service's database. During one of her broadcasts, the applicant reported on the data leak. A week later, the source started publishing data on Twitter on the salaries of persons working in public institutions. Criminal proceedings on the data leak commenced, and the applicant was asked to submit transcripts and e-mail correspondence with the source, which the applicant refused to do. The authorities discovered the I.P. address of the person who connected to the database, and found several phone calls between this person and the applicant's phone number.[42]

On the day of the person's arrest, a search warrant was issued to search the applicant's home. During the search, personal items of the applicant containing personal data and work-related materials were seized.[43]

[40] Susan Nash, 'Freedom of Expression, Disclosure of Journalists' Sources and the European Court of Human Rights: Goodwin V United Kingdom' (1997) 1 The International Journal of Evidence & Proof.
[41] Sandeep Savla, 'Company Informants and Disclosure of Journalistic Sources: Goodwin V United Kingdom' (1997) 4 Journal of Financial Crime.
[42] *Nagla v. Latvia* App no 73469/10 (ECHR 16 July 2013).
[43] ibid 42.

The applicant complained to the ECtHR that her right to freedom of expression under Article 10 of the Convention was interfered with. Moreover, she emphasised that searches at a journalist's home threatened the protection of journalistic sources more than disclosure orders.[44]

In its analysis, the Court stated that a source is any person who assists journalists by providing them information, and emphasised the chilling effect that could result if a journalist is considered to be assisting the authorities in the identification of a source who wishes to remain anonymous.[45]

The Court continued by addressing the search, or more specifically, the extensive scope of the warrant. It stated that it does not matter whether the source was discovered prior to the search, as in this case, because the devices which were seized could have led the authorities to discover the applicant's other sources of information as well. In relation to the search order, the Court stated that it would be ideal for the prosecuting authorities to obtain an independent review when ordering searches under urgent procedures.[46]

Moreover, the Court highlighted that search measures aimed to reveal a journalistic source are far more extreme than orders to disclose a source's identity. Furthermore, in the case in question, the 'vague' way in which the warrant had been issued, allowing the seizures of all information about the crime committed by the source, made the acts in question more drastic as the authorities had access to all the records which were held by the applicant. It also emphasised that limitations to the non-disclosure of journalistic sources should be thoroughly considered by the Court.[47]

The Court emphasised that the right of journalists to not disclose their sources should be treated with the utmost caution as it is not just a privilege that could be given or taken away, depending on the legitimacy of the source.[48]

[44] (n 42).
[45] (n 42).
[46] (n 42).
[47] (n 42).
[48] (n 42).

It also considered that the search and seizures took place nearly three months after the applicant announced the data leak during the broadcast, during which there was no communication between the applicant and the source. Therefore, the urgency of the search at the applicant's home which, according to the reason stated on the warrant, was to prevent tampering with evidence, made the Court believe that the searches were associated with the journalist's source.[49]

As regards the seizure of storage devices, the Court declared that they raise doubt on journalists' freedom of expression and the protection of their sources; thus, the Court called for 'adequate safeguards' to protect against any abuses over the information which is contained in such devices. In the present case, the government failed to show that this was done, and the investigating judge fell short of showing the sufficiency of the interest of the investigation, that of securing the evidence over public interest of protecting the freedom of expression of journalists and the protection of the source. Ultimately, the Court found a violation of Article 10 of the Convention.[50]

3.2.3. Roemen and Schmit v. Luxembourg

The Case of Roemen and Schmit v. Luxembourg concerns two applicants, a journalist, Robert Roemen, and his lawyer, Anne-Marie Schmit. The first applicant published an article alleging that a Minister was committing value-added tax frauds and that he had been ordered to pay a tax fine. The applicants produced documents to prove the fine, and the actions that followed, including the appeal against the fine to the District Court by the Minister, which ruled the fine to be unjustified. This information was based on leaked internal documents of the Land Registry and Land Property Office. The Minister concerned proceeded by instituting a criminal complaint against the first applicant and the newspaper which he worked with, while an investigation was opened to identify the

[49] (n 42).
[50] (n 42).

civil servant who had passed on the information and breached professional confidence.[51]

Three search warrants were issued to search the applicant's home and workplace, as well as the second applicant's office, who was the lawyer of the first applicant. The first two warrants related to the first applicant authorised search and seizures of all items which could have assisted the authorities in their investigation on the case, including the identification of the journalist's source. No evidence was discovered. The applicant proceeded by instituting a proceeding in which he alleged a violation of Article 10, relying on his right to protect his journalistic sources and have the search set aside, with both being dismissed by the District Court.[52]

A letter was seized from the search at the second applicant's work office. This was from the Director of the Registration and State-Property Department, and was addressed to the Prime Minister. It had a handwritten note on it stating that it was confidential. According to the applicant, the letter was handed to her by the first applicant as she was his lawyer; thereafter, it was anonymously sent to the newsroom. As there were certain formalities required by law missing with the warrants, the seizure was considered invalid, and the letter was returned to the second applicant. However, the letter was seized again on the same day after a fresh warrant was issued. She also instituted proceedings on the basis of principles related to her profession, which were also dismissed.[53]

The applicants applied to the ECtHR, where the first applicant complained to the Court of an interference with his right to freedom of expression under Article 10. The Court began by reiterating the importance of journalistic sources to freedom of the press and that their protection should be safeguarded, while any limitation to the non-disclosure of journalistic sources should be thoroughly considered.[54]

[51] *Roemen and Schmit* v. Luxembourg App no 51772/99 (ECHR 25 February 2003).
[52] ibid 51.
[53] (n 51).
[54] (n 51).

In the Court's opinion, the searches at the applicant's home and workplace were intended to discover the identity of the civil servant who acted as a source to the journalist. Here, the Court established that, regardless of the outcome of the search, whether it had failed to find the source or otherwise, the purpose of the search remains that of disclosing the journalist's source.[55]

In its assessment, the Court contrasted this case with the Goodwin case. It emphasised that search measures at journalists' homes and workplace with the aim of discovering the identity of their source is a 'more drastic measure than an order to divulge the source', as in the Goodwin case. This is in view of the fact that such measures grant investigators huge investigative capabilities as they would be granted access to all the documents held by the journalist. Therefore, the Court declared that search measures 'undermine the protection of sources to an even greater extent' than orders to divulge the source. Even though, in this case, the reasons for the search were considered by the Court to be relevant, they were not enough to justify them. In this case, a violation of Article 10 was found.[56]

3.2.4. Nordisk Film & TV A/S v. Denmark

The decision taken in Nordisk Film & TV A/S v. Denmark distinguishes this case from the other cases because, unlike the other analysed cases, it deals with sources who were unaware that they were speaking to a journalist, thereby separating them from traditional sources.[57]

The applicant company worked on producing a programme to investigate paedophilia in Denmark to be broadcast on national television. The journalist in charge of the investigation went undercover and started attending meetings of an association which worked towards assisting paedophiles in developing a sense of responsibility towards children. During the course of these meetings, the journalist became friends with two

[55] (n 51).
[56] (n 51).
[57] *Nordisk Film & TV A/S v. Denmark* App no 40485/02 (ECHR 8 December 2005).

other members, ‘Mogens’ and ‘Per’, who made many incriminating comments on the paedophilia situation in Denmark and India. ‘Mogens’ suggested to the journalist to visit a hotel in India. Consequently, the journalist visited India, where he interviewed an Indian boy who knew ‘Mogens’, and witnessed a young Indian boy offering sexual services in front of the hotel. During his visit, the journalist took several notes and camera recordings, most of which were taken secretly.[58]

The applicant company contacted the association and the members whom he had recorded before the programme was aired in order to assure them that their identity would be kept anonymous. The association tried to obtain an injunction to stop the programme from airing, but to no avail. ‘Mogens’ was arrested the day after the programme was broadcast, and was charged with sexual offences.[59]

The Copenhagen Police requested for the recorded footage which was not aired to be disclosed in order to assist them in their investigation; however, the applicant company refused to comply. The public prosecutor proceeded by requesting a court order to compel the applicant company to surrender the non-televised footage to the police; however, the Court did not grant the request on the basis of the protection of journalistic sources. This decision was appealed by the public prosecutor, and ultimately, the Supreme Court ordered the applicant company to hand over specific and limited raw footage and notes which were only associated with ‘Mogens’, together with the recordings of the Indian boy outside the hotel in India. The order further specified that recordings and notes which had the potential risk of revealing the identities of the hotel manager’s mother, the police officer, and the victim were exempted.[60]

The applicant company complained to the ECtHR that the decision taken by the Supreme Court to submit the unpublished footage violated its right under Article 10.[61]

[58] ibid 57.
[59] (n 57).
[60] (n 57).
[61] (n 57).

In its analysis, the Court began by remarking that this case was different from other cases which it had previously examined, and this difference emerges from the fact that the journalist acted undercover, and the persons who assisted his investigation were unaware that they were talking to a journalist and were being recorded with a hidden camera, or even asked to give their consent. Therefore, the Court stated that, under such circumstances, they could not be considered as 'sources of journalistic information in the traditional sense'. Moreover, in view of the above understanding of the Court, the order of the Supreme Court was not considered to be an order to disclose journalistic sources of information, but it was regarded by the Court as a handover of research materials.[62]

The Court established that, because the sources were unaware and were not considered as the traditional kind of journalistic sources, the degree of protection afforded to journalists to not disclose their sources under Article 10 could not reach the same level as that of those journalists whose sources freely assist them in matters of public interest. This is because, in cases which concern 'traditional' sources, these sources would have voluntarily assisted the press. Nevertheless, it was established that Article 10 also protects 'unaware' sources who contribute to the work of an undercover journalist unknowingly; however, the level of protection is reduced, and does not reach the same level as that of 'traditional' sources.[63]

The Court noted that the way in which the applicant company had been ordered to divulge its recordings and notes was appropriate and in line with Article 10 because the identities of the three sources who were considered to be sources in the traditional sense were protected and the order was in fact limited. Moreover, it remarked that the topic of the programme, paedophilia, was of serious concern to the public, while highlighting the importance of the investigation into the matter. The Court also acknowledged that an order to hand over material is far more acceptable than searches at a journalist's home or workplace.[64]

[62] (n 57).
[63] (n 57).
[64] (n 57).

3.2.5. Voskuil v. the Netherlands

The applicant in the Voskuil v. the Netherlands case is a journalist who was denied the right to not disclose his source. The applicant had published two articles where he expressed doubts on a police operation on arms trafficking. In one of the articles, the journalists quote a policeman who wished to remain anonymous. The applicant was summoned to appear as a witness in the case against the accused for arms trafficking at the request of the defence. During the proceedings, the journalist stated that he knew the policeman whom he had quoted. He then decided to refrain from answering further questions on the policeman, invoking his right of non-disclosure. However, the Court of Appeal insisted that he must answer the question as his answers could affect the conviction of the accused and the integrity of the authorities. He was further threatened with detention, and subsequently, he replied to the questions which were being asked.[65]

The applicant was then requested to reveal his source, but refused to comply. The Advocate General and the Court of Appeal held that the applicant must reveal the identity of his source; however, the applicant invoked his right to remain silent, leading to his detainment. He was given an 'unreasoned decision' for his detainment, and was allowed to consult his lawyer only once, while requests to visit the applicant were refused, as well as the request for his release. The Court of Appeal based its reasoning on the fact that the interest of the journalist to not disclose the identity of his source was outweighed by the integrity of the authorities and the interest of the accused.[66] The applicant was released after he refused again to disclose the identity of his source as the Court of Appeal found no credibility in the applicant's previous statements about the source.[67]

Appearing before the ECtHR, the applicant argued that he had been denied his right to not disclose his source, and had been detained in order to force him to do so in violation of his right under Article 10. In its examination, the Court accepted that the interference

[65] *Voskuil v. the Netherlands* App no 64752/01 (ECHR 22 November 2007).
[66] ibid 65.
[67] (n 65).

with the applicant's right was the prevention of crime. It proceeded by emphasising the importance of the protection of journalistic sources in a democratic society.[68]

One of the reasons the Government gave why the applicant had been ordered to divulge his source was 'to secure a fair trial for the accused'. The Court established that this was not a justifiable reason to force a journalist to disclose his source. The second reason which the Government gave was 'to guard the integrity of the Amsterdam police'. The Court remarked that it was conscious of the Government's concern about the potential harm to the reputation of its public authorities; however, the public has every right to know when the public authorities act unlawfully.[69]

The Court was also shocked by the overarching ways of the Dutch authorities to force the applicant to reveal the identity of his source, stating that such extensive measures could discourage other persons from sharing information with the press. A violation of Article 10 was found as it was established that the Government's necessity to discover the identity of the source was not 'sufficient' to outweigh the applicant's interest to keep his source anonymous.[70]

3.2.6. Financial Times Ltd and Others v. the United Kingdom

In the case of Financial Times Ltd and Others v. the United Kingdom, the Court had to decide whether orders to journalists to hand over documents leaked to them which had the potential to identify their journalistic sources violated their right to freedom of expression.[71]

The case originated in 2001, when an anonymous person 'X' sent leaked documents from a Belgian brewing company, Interbrew, on a possible takeover of another brewing company, SAB, to a number of news organisations. Upon receiving the documents, the

[68] (n 65).
[69] (n 65).
[70] (n 65).
[71] *Financial Times Ltd and Others v. the United Kingdom* App no 821/02 (ECHR 15 December 2009).

news organisations published the story, and subsequently, Interbrew issued a statement disproving the published information. Subsequent to the publication of the story, there was movement in the share prices of the two brewing companies involved.[72]

Interbrew lodged proceedings against the applicants seeking to obtain the leaked documents in order to launch criminal proceedings against the anonymous person who had leaked the documents. The company also obtained an injunction against the news organisations.[73]

Interbrew proceeded by seeking an order against the applicants for the handover of documents on the leaked information and any person with whom they had contact over the documents. The High Court ruled that, if a person becomes involved in a misconduct unknowingly, the person must then assist the persons who fell victim to the misconduct by giving all the information he has on the misconduct and the perpetrator. Therefore, the High Court ordered the journalists to deliver the documents. The applicants' appeal was rejected.[74]

The applicants lodged a complaint to the European Court, alleging that the order to hand over the leaked documents to Interbrew violated their right of freedom of expression under Article 10. In its assessment, the Court examined whether the interference was necessary. It established that the protection of journalistic sources is fundamental for the freedom of the press, emphasising the potential chilling effect which might occur when journalists are seen to assist the authorities in identifying anonymous sources. The Court also remarked that, when a source acts in an improper way, the acts of the source should not influence the decision whether disclosure orders should be made or not. However, it acknowledged that there might be circumstances where the source's purpose might be 'relevant' and 'sufficient' to grant disclosure orders. However, this did not apply in the present case.[75]

[72] ibid 71.
[73] (n 71).
[74] (n 71).
[75] (n 71).

Furthermore, the Court noticed that Interbrew did not seek an injunction before the articles were published to prevent the information from being made public, but the objective of the injunction order was to prevent further leaks from being published. In the opinion of the Court, this was insufficient to justify a disclosure order; thus, it found a violation of Article 10 as legal actions for past breaches of confidence were not enough to prevail over public interest.[76]

3.2.7. Sanoma Uitgevers B.V. v. the Netherlands

The case of Sanoma Uitgevers B.V. v. the Netherlands revolves around an illegal street race which journalists from the applicant company attended following an invitation. They were allowed to take photos of the event on condition that the identity of the participants remained undisclosed. The street race was eventually shut down by the police, albeit no arrests were made. The applicant company intended to publish an article on the street race, where it was meant to publish the photographs in a manner wherein the cars and participants would remain hidden.[77]

Before the article was published, the police contacted the editor of the magazine, requesting them to surrender the photographs as they had reasons to believe that one of the participants had been involved in a robbery. The request was dismissed by the editor on the basis that they had agreed to keep the identity of the participants anonymous. The public prosecutor also issued summons to the applicant company to surrender the photographs, which was also refused. The editor was also threatened with detainment and financial damage that could ensue. The editor was arrested, but was released on the same day. An investigating judge stated that the requirement of the criminal investigation outweighed the applicant company's journalistic privilege, and under Dutch law, a prosecutor can seize materials without the need for judicial authorisation. Eventually, the CD-ROM containing the photographs was surrendered.[78]

[76] (n 71).
[77] *Sanoma Uitgevers B.V. v. the Netherlands* App no 38224/03 (ECHR 14 September 2010).
[78] ibid 77.

The applicant company filed a complaint pursuing the return of the CD-ROM and for the police to destroy any copies of the photographs, as well as an injunction to stop the police from using the information which they had obtained from the CD-ROM. The Regional Court ordered the return of the CD-ROM; however, it found that the seizure had been lawful on the basis of the importance of the criminal investigation. The applicant company's appeal was also rejected.[79]

The company complained to the European Court on a violation of their right to protect their journalistic sources under Article 10. The Court began by stating that any interference with the protection of journalistic sources cannot be justified, unless there is 'an overriding requirement in the public interest'.[80]

It established that there was no need for journalists to prove that they had made confidential agreements with their sources. Furthermore, it considered that, in the present case, the disclosure order was not to identify the participants of the illegal race; however, a compulsory handover of data could still potentially have a chilling effect on the exercise of journalistic freedom of expression. It also pointed out and considered that, despite the absence of a search of the applicants' workplace or homes, there was still an intention to do so if the editors had not handed over the CD-ROM, as well as the threats of arrest made to the editor.[81]

In its assessment, the Court dealt with the issue of the domestic legal basis of the measures used by the Government and their quality. It declared that any interference with the right of journalists to not disclose their sources should be backed by legal procedural safeguards. These safeguards should include a review by a judge or independent body, and in cases of urgent orders, an independent review should be conducted to secure the protection of journalistic sources. Independent reviews conducted after measures capable of revealing a source are taken are not sufficient for the Court.[82]

[79] (n 77).
[80] (n 77).
[81] (n 77).
[82] (n 77).

Before any disclosure, the appointed independent body must review the potential risks and individual interests in relation to the material that is sought to be divulged. The decision from the review must be clear, and if possible, it must indicate fewer interfering measures which can still achieve the issue of public interest established. The body should also be able to refuse to grant a disclosure order or limit the order to safeguard the identity of sources. There should additionally be procedures to handle urgent situations which must have the capacity to distinguish between information that has the potential to identify a source from information that does not.[83]

The Court found a violation of Article 10 as the interference with the applicant company's freedom of expression was not prescribed by law. It was established that the quality of the law was not sufficient enough as there had not been a procedure in place with the sufficient legal safeguards to conduct an independent assessment and balance both interests, that is, the criminal investigation and public interest in the protection of journalistic sources.[84]

3.2.8. Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands

The case concerns a limited liability company which published a daily newspaper, De Telegraaf, and two journalists. The two journalists published an article in the newspaper on an investigation by the Netherlands Secret Service, implying that important confidential information had been disclosed to the criminal circuit of Amsterdam. The first applicant company was ordered to surrender documents on the case. However, the applicant company objected on the basis of the protection of its journalistic sources as fingerprints on the documents could have led to the identification of the sources. The objection was dismissed, as well as an appeal against this decision.[85]

[83] (n 77).
[84] (n 77).
[85] *Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands* App no 39315/06.

The applicant initiated criminal proceedings, seeking to terminate the investigation and the surveillance power which were being used with the intention of discovering the identity of the source, claiming that they were unlawful measures. The State did not confirm or deny these allegations. In its judgement, the Court of Appeal stated that the protection of journalistic sources is not absolute.[86]

Moreover, the applicants appeared as witnesses to the criminal proceedings against the persons who were suspected of leaking the information. During the proceedings, the applicants refused to answer any questions capable of identifying the source, and thus, an order for their detainment was issued. They were released a few days later after the importance of journalistic sources was recognised by the Regional Court. In its examination of the investigation, the Supervisory Board found the use of special powers in the investigation of the leaked information lawful.[87]

The applicants complained to the ECtHR that the special powers which had been used interfered with their rights under Article 10 and Article 8. The Court noticed that the aim of the surveillance was to discover from where the journalists had acquired the information. In the previous case-law, the Court stated that legislation on secret surveillance should be reviewed by a judge or an independent body to eliminate any risks or abuses. In the present case, the Court found a violation of Articles 8 and 10 because the law did not provide such safeguards against the use of surveillance powers over journalists with the purpose of disclosing their sources.[88]

Furthermore, as for the order to hand over their documents, the Court also found a violation of Article 10 as it held that the need to determine who of the AIVD officials had provided the confidential documents was not enough to justify an order to surrender documents as the information contained within the documents was already circulating, and thus, the withdrawal of the documents was pointless.[89]

[86] ibid 85.
[87] (n 85).
[88] (n 85).
[89] (n 85).

3.2.9. Becker v. Norway

The case concerns a journalist who published an article on a letter which she had received from Mr. X of a Norwegian Oil Company. The letter turned out to be fabricated, and Mr. X was charged with market manipulation. During the criminal procedures, the applicant refused to testify against her source; thus, the Court ordered her to testify. The applicant appealed to the High Court against the order. However, this was dismissed since the identity of the source was already known to the Court; thus, there was no need to protect the source's identity.[90]

Relying on Article 125 of the Code of Criminal Procedure, the applicant argued that she had the right to refuse to provide information about her source. She was later fined €3,700 for refusing to comply.[91]

The applicant complained to the ECtHR that the decision of the High Court which dismissed her appeal against the order, obliging her to testify on her source of information, interfered with her right under Article 10 as a journalist to not be obliged to identify her sources.[92]

In its judgement, the Court found an interference which was prescribed by law; thus, it examined its necessity in a democratic society. For the first time, the Court was faced with the issue of the protection of a source who revealed his own identity to the authorities; thus, the applicant was ordered to testify, not to reveal the identity of her source, as in the previous case-law, but to give evidence against her source. Therefore, the Court had to examine the decision of the High Court which stated that, in such circumstances, there was no source to protect.[93]

The Court remarked that, in its previous case-law, it had held that actions of the source should not determine whether a disclosure order should be made or not, and that the

[90] *Becker v. Norway* App no 21272/12 (ECHR 5 October 2017).
[91] ibid 90.
[92] (n 90).
[93] (n 90).

protection of journalistic sources cannot be withdrawn because of the source's actions, while Article 10 also protects sources whose identity is known to the authorities.[94]

However, in this case, the Court held that, due to the circumstances of the case, the 'motivation' of the source and his own disclosure to the authorities lessened the degree of the protection afforded to journalistic sources under Article 10.[95]

Nonetheless, the Court noticed that the applicant's refusal to identify her source did not impede the investigation or the proceedings. With regards to the importance of the protection of journalistic sources for press freedom, and the chilling effect which derives from journalists disclosing their sources, the Court held that 'the circumstances in the present case were not sufficient to compel the applicant to testify', nor were the reasons which were specified. Therefore, the Court found a violation of Article 10 as the public interest of protecting journalistic sources outweighed the impugned order.[96]

3.2.10. Jecker v. Switzerland

In this case, a journalist was ordered to disclose the identity of one of her sources who happened to be a drug dealer. The journalist met with the dealer, and wrote an article about him, where she reported that the source had been dealing drugs for 10 years and made a profit of 12,000 Swiss francs annually.[97]

Subsequently, the public prosecutor opened an investigation, and the applicant was asked to give evidence, but she refused. The public prosecutor declared that the applicant did not have a right to refuse to testify. The Cantonal Court agreed with the request of the applicant to not identify her source. The prosecutor appealed, and the Federal Tribunal held that the applicant could not depend on the right to refuse to testify as the trading of soft drugs was a crime, and she was the only one who could identify

[94] (n 90).
[95] (n 90).
[96] (n 90).
[97] *Jecker v. Switzerland* App no 35996/14 (ECHR 6 October 2020).

the culprit. The Federal Tribunal relied on the conclusion of the balancing exercise between the interests which the legislature had previously made.[98]

The applicant complained to the European Court, relying on Article 10. It held that there was lawful interference. With regards to the necessity of the interference, the Court acknowledged that there were sufficient reasons for the authorities to want to prosecute the drug dealer, and the applicant could identify the perpetrator; however, this argument was not enough to issue a disclosure order.[99]

Moreover, it noticed that the Federal Supreme Court had relied on a catalogue of the legislature which lists the offences justifying an exception to the protection of sources. The Court held that, given the importance of the protection of journalistic sources, interference is only acceptable if outweighed by a requirement in the public interest; thus, it was not enough to justify the interference solely because the offence fell into a specific category or a legal order which was created without any specifics and in general terms. A violation of Article 10 was found as the domestic authorities failed to provide sufficient reason to justify the interference of the applicant's freedom of expression.[100]

3.2.11. Ernst and Others v. Belgium

The case concerns four applicants who worked for different newspapers. Massive searches were ordered at the applicants' newspaper offices and their homes. The search warrant was issued to the investigating judge who was in charge of a prosecution of members of the State legal service for a breach of confidence after there had been leaks in highly sensitive criminal cases.[101]

The applicant proceeded by lodging a complaint with the investigating judge of the Brussels Court of First Instance. The applicants complained that the searches overlooked

[98] ibid 97.
[99] (n 97).
[100] (n 97).
[101] *Ernst and Others v. Belgium* App no 33400/96 (ECHR 15 July 2003).

their right to keep the identity of their journalistic sources hidden, as provided for under Article 10 of the Convention. Moreover, they applied to be joined as civil parties to the proceedings they had brought against the investigating judge and others who had issued the search warrants. The case was transferred to the Principal Public Prosecutor at the Court of Cassation who held that the application to become civil parties was held to be inadmissible because the judge enjoyed judicial immunity; thus, the prosecution was not initiated.[102]

The applicants complained to the ECtHR on a number of violations, one of which was the extensive searches and seizures, claiming that there had been an interference with their rights under Article 10. The Court held that there indeed was an interference with the applicants' right, which was lawful by the Criminal Investigation Code, and it was intended to secure the authority and impartiality of the Courts.[103]

It established that the measures employed by the authorities were meant to discover the identity of those who had leaked the information, hence the journalists' sources. The Court was shocked by the extensive searches and seizure. It remarked that the Belgian Government had not given concrete reasoning as to why the applicants had been targeted and in what way they were involved in the crime in question. It also had not provided which investigative measures had been used against legal officials who had probably been behind the leaks.[104]

Furthermore, the Court questioned whether there could have been better measures, such as internal investigation, which could have been employed. The Government had failed to prove that they would have been unable to investigate the case without such drastic measures. The Court stated that measures like the ones employed in this case, search and seizure, are far more detrimental to the protection of journalistic sources than disclosure orders.[105]

[102] ibid 101.
[103] (n 101).
[104] (n 101).
[105] (n 101).

The Court found that there had been a violation of the applicants' right to freedom of expression under Article 10 as the Government had failed to prove that a fair balance had been struck between the different interests, and the reasons which the Government relied on were not enough to justify the extensive measures which had been employed.[106]

3.2.12. Tillack v. Belgium

The applicant, a journalist, wrote two articles on allegations by a European civil servant on irregularities within European institutions. This information was based on confidential documents which were derived from the European Anti-Fraud Office (OLAF). The following article concerned the internal investigation which OLAF had carried out. OLAF suspected that the civil servant involved had been bribed by the journalist; thus, it initiated an internal investigation to identify the civil servant.[107]

OLAF proceeded by opening a complaint with the Belgian judicial authorities. The investigating judge ordered for the search of the applicant's home and workplace, where much of the applicant's work material was seized and sealed. The applicant applied for leave to consult the investigation file; however, the Public Prosecutor refused the application. The applicant then applied to the investigating judge for a discontinuation of the seizure measures; however, this was also rejected. The applicant appealed, and consequently, the Indictment Division held that the right of journalists to protect the identity of their sources was not established by law, that the wording of Article 10 does not recognise this right, that the right does not constitute an 'immunity' for journalists from prosecution, and that it should not be utilised to cover unlawful acts. Ultimately, it found the seizure order lawful and that it pursued a legitimate aim. The applicant appealed on the basis of law, making reference to the protection of journalistic sources under Article 10. The appeal was dismissed.[108]

[106] (n 101).
[107] (n 2).
[108] (n 2).

The applicant lodged two applications with the Court of First Instance of the European Communities, one of which was to seek an injunction to prohibit OLAF from investigating the seized documents. These were also dismissed. The European Ombudsman found that the alleged bribery probably never took place, and the allegation was based on rumours, without any serious fact-checking, and thus, recommended to OLAF to acknowledge this mistake.[109]

The journalist lodged a complaint to the ECtHR regarding the searches and seizures, stating that the orders had violated his right under Article 10. The Court held that the searches at the applicant's home and workplace, as well as the seizures, had caused an interference with his rights under Article 10(1); moreover, the interference was prescribed by law and pursued a legitimate aim. Therefore, the Court had to examine the necessity of the interference in a democratic society. It noticed that the purpose of the searches was to discover the identity of the source; however, since the offence was based on rumours, these measures could not be justified. However, even though the orders proved to be unproductive, for the Court, the purpose behind them was still significant.[110]

The Court established that 'the right of journalists not to disclose their sources cannot be considered a mere privilege to be granted or taken away depending on the lawfulness of their sources but is part and parcel of the right to information, to be treated with the utmost caution'.[111]

The Court ultimately held that the measures employed by OLAF and the Belgian authorities violated the applicant's right of freedom of expression under Article 10 as the reasons given by the National Court were not enough to justify the searches.[112]

[109] (n 2).
[110] (n 2).
[111] (n 2).
[112] (n 2).

3.2.13. Martin and Others v. France

The case of Martin and Others v. France concerns three journalists who wrote and published articles on the management of the Languedoc-Roussillon region, containing large extracts from confidential reports of the Regional Chamber of Accounts of the region.[113]

A search of the applicants' workplace was ordered in order to establish from where they had obtained the information which they wrote about in the articles. During the search, a number of documents were seized and placed under seal, and the hard disks of the applicants' computers were also copied. It was found that other sixty-six people had also been sent extracts from the confidential report.[114]

After the investigations, an order of indictment of the first, second, third, and fourth applicant was laid down on the basis of a breach of professional secrecy, and they pleaded for the secrecy of sources. The applicants proceeded by requesting to the investigating Chamber the annulment of the search and seizures and all acts which followed, including the indictment. However, their request was rejected as the Chamber found that the search was not meant to identify the source, but its purpose was to discover how the journalists had been able to obtain the information derived from the confidential report. The Chamber also stated that the search did not cause any harm to the journalists' profession or cause any delays.[115]

In the meantime, the investigating judge established a dismissal order in favour of the applicants, where it was established that there was no certainty that the author was bound by professional secrecy, and thus, it was not to be considered as an offence of concealment.[116]

[113] *Martin and Others v. France* App no 30002/08 (ECHR 12 April 2012).
[114] ibid 113.
[115] (n 113).
[116] (n 113).

The applicants complained to the ECtHR that the investigation violated their right of freedom of expression. In its assessment, the Court started by emphasising the importance of journalistic sources, remarking that, although the press has a significant role in a democratic society, it still has boundaries which must not be crossed, including the requirement to avert from publishing confidential information while respecting its duty of informing the public on issues of public interest.[117]

The Court stated that searches at journalists' homes and workplace to discover the identity of officials who had passed on confidential information constitutes a violation of Article 10(1). In the case in question, the Court noted that the confidential issue which the applicants reported about was on the management of public funds, and this is considered a matter of general interest; thus, the applicants had a right to inform the public.[118]

With regards to the search, the Court established that, regardless of the outcome of the search, the purpose, that is, the identification of the source, remains, thus constituting an interference. The purpose of the search still stands, even if the search does not establish anything. In the case in question, the search was aimed to establish potential perpetrators of a violation of professional secrecy and potential illegality committed by the applicants while performing their duties, thus falling within the ambit of the protection of journalistic sources.[119]

The Court held that there had been a violation of Article 10 of the Convention as, from its analysis, it was clear that the Government had not balanced properly the competing interests, namely, the protection of journalistic sources and the prevention of crime. Furthermore, the reasons given to justify the search were considered to be 'relevant' but not 'sufficient'; hence, the search was disproportionate.[120]

[117] (n 113).
[118] (n 113).
[119] (n 113).
[120] (n 113).

3.2.14. Ressiot and Others v. France

This case involves five journalists who complained of search and seizures at their offices at L'Equipe and Le Point as well as their homes. The newspapers published articles on a judicial investigation into alleged doping of a cyclist team which included confidential information about the investigation. The French Police opened an investigation on the leaked documents, and the cycling team proceeded with a civil action for breach of confidentiality. An order for a search at the offices of the newspapers was issued. The first two applicants' homes were searched, the computers of the third and fourth applicants were seized for a short time, and the fifth applicant's telephone was intercepted.[121]

After comments made by the investigating judge during an interview on the problems which arose during the investigation, the applicants requested the annulment of all the documents related to the search. After lengthy proceedings, the French Courts held that the search, seizures, and phone interception were legitimate.[122]

Relying on Article 10, the five journalists complained to the ECtHR. The Court held that the protection of journalistic sources is fundamental for media freedom, and it recalled principles from previous judgements on the protection of journalistic sources. Moreover, it referred to the Recommendation which was established by the Committee of Ministers on the provision of information through the media about criminal proceedings, which states that the media has a right to report on criminal proceedings to the general public, while emphasising its importance.[123]

The Court established that the right of the applicants was interfered with, albeit in accordance with the law and having a legitimate aim. It went on to examine the necessity of the measures which had been applied. It established that the topic of the

[121] *Ressiot and Others v. France* App no 15054/07 (ECHR 28 June 2012).
[122] ibid 121.
[123] (n 121).

articles concerned, doping in professional sports, is a matter of public interest; thus, the public has a right to receive such information.[124]

It made note of the fact that the French authorities had taken a long time from the publication of the articles to act on the matter, and the purpose of the measures was to discover the identity of the source. Even though the search and seizures did not yield the source, their purpose still remains relevant for the Court. Moreover, it emphasised that the right of journalists to protect their journalistic sources is not a privilege, but it is an important element of the right to information.[125]

The Court perceived the searches and seizure measures against the journalists as a threat to the free exercise of journalism, stating that such measures had much more impact on the protection of journalistic sources than disclosure orders. The Court concluded that the applicants' right of freedom of expression under Article 10 had been violated after the French authorities failed to show that a fair balance between the interested parties had been struck.[126]

3.2.15. Saint-Paul Luxembourg S.A. v. Luxembourg

The case concerns a newspaper which published an article on families who had lost custody of their children, where the journalist named the two teenagers and the social worker involved in the case. The name of the journalist signing the report was not listed as a recognised journalist; thus, when the social worker complained of defamation, the investigating judge ordered a search and seizure of documents on the case at the applicant company. The purpose of these measures was to disclose the identity of the author behind the article.[127]

[124] (n 121).
[125] (n 121).
[126] (n 121).
[127] *Saint-Paul Luxembourg S.A. v. Luxembourg* App no 26419/10 (ECHR 18 April 2013).

The applicant company lodged a complaint to the ECtHR, relying on Article 10. The Court began by emphasising the importance of journalistic sources for the freedom of the press. It recalled its previous judgements in which it had held that searches seeking to identify a civil servant who provides information to journalists is considered as an interference with the rights of a journalist under Article 10(1) and that searches are a far more drastic measure than disclosure orders.[128]

Furthermore, the Court held that the search, despite failing in its objective to identify the source, had the potential to access information held by the journalist which was unrelated to the case and reveal the identities of other sources.[129]

The broad language of the warrant issued for the search and seizure bothered the Court, which maintained that such a warrant permitted the authorities to search for the identity of the journalist's source and other potential sources. Moreover, the USB insertion into the computer of the journalist enabled the retrieval of information unrelated to the case being discussed. The Court stated that the warrant's scope should have been narrower, with more precise wording. Therefore, a violation of Article 10 was found.[130]

3.2.16. Stichting Ostade Blade v. the Netherlands

In the decision taken in Stichting Ostade Blade v. The Netherlands, the European Court held that a complaint by a Dutch magazine on the basis of a police raid was inadmissible. The case concerns a Dutch magazine called 'Ravage', whose editors published a press release, stating that they would be publishing a letter which they had received from a group called Earth Liberation Front (ELF) wherein the group claimed responsibility for a bomb attack which had taken place earlier that year.[131]

[128] ibid 127.
[129] (n 127).
[130] (n 127).
[131] *Stichting Ostade Blade v. the Netherlands* App no 8406/06 (ECHR 27 May 2014).

The following day, police raided the magazine's premises to search for the letter to be used as part of the investigation which was being conducted on the bomb attacks. One of the editors told police that the letter was not on the premises; however, the police search went on. The police seized several materials from the office with the permission of one of the editors. Everything which had been seized was eventually returned.[132]

The magazine proceeded by claiming compensation which was rejected; however, an appeal was lodged, and the magazine was compensated for pecuniary damage. The applicant foundation also brought proceedings before the Regional Court of the Hague, claiming that their rights had been violated, including their right to freedom of expression. The Regional Court dismissed their claim, and they appealed a number of times; however, all were rejected. Ultimately, the Amsterdam Court of Appeal found a violation of Articles 10 and 8 of the Convention, but only on the basis that the search to find possible connections between the applicant foundation and the ELF was not justified. The applicant foundation complained to the ECtHR, including on the basis of Article 10, alleging a violation of its right to the protection of journalistic sources.[133]

In its analysis, the Court acknowledged the importance of the press and the freedom of individuals to be able to inform the press with information of public interest. However, it pointed out that not every individual who passes on information to journalists is considered as a source in the traditional sense. Nonetheless, an order to journalists to hand over their material might also result in a chilling effect on the exercise of journalistic freedom of expression. It went on to state that the degree of protection under Article 10 in circumstances like the case in question might not reach the same level as that of those cases which concern 'traditional' journalistic sources.[134]

Therefore, in this case, the informant was not entitled to the same level of protection which a source usually enjoys since the Court established that the motivation of the source was to gain publicity and not to inform the public on issues which are of interest

[132] ibid 131.
[133] (n 131).
[134] (n 131).

to them. Moreover, the protection of the Court cannot be extended to those persons claiming responsibility for crimes.[135]

After analysing the case, the Court concluded that the interference with the right to freedom of expression was justified under Article 10(2) as the search for the letter had been conducted with the legitimate aim of the prevention of crime, and it was necessary in order to obtain a piece of evidence.[136]

3.2.17. Görmüş and Others v. Turkey

The case concerns six applicants who worked for a magazine called 'Nokta', which published an article on confidential documents of the Armed Forces. The article revealed that a list had been drawn up within the Armed Forces, dividing press editors and journalists according to whether they were approving of or hostile towards the Armed Forces thereby selectively inviting journalists or media houses to cover news on them.[137]

The Chief of Staff of the Armed Forces initiated an investigation on the article. The first applicant was asked to return the confidential document, but refused. The Military Court of the General Staff ordered a search and seizures of the magazine's premises and copies of information stored in all the computers. The magazine and the first applicant opposed the search and seizure orders, and appealed for the order to be annulled on the basis of their right to protect their journalistic sources.[138]

The magazine complained to the ECtHR on the basis of Article 10. The Court held that the interference was prescribed by law and had a legitimate aim. In assessing its necessity in a democratic society, the Court began by establishing that the article contributed to the public debate as the information which was published about the classifying of journalists contributed to the scope of the right of the public to receive

[135] (n 131).
[136] (n 131).
[137] *Görmüş and Others v. Turkey* App no 49085/07 (ECHR 19 January 2016).
[138] ibid 137.

information under Article 10. Moreover, it highlighted that searches and seizures seeking to identify the official who had passed on the confidential document are considered by the Court to undermine the right of journalists to protect their journalistic sources more than disclosure orders as such interference could discourage potential sources from providing the press with vital information. Moreover, the extensive data which was derived from the computer allowed the authorities to collect data which was unrelated to the case. It pointed out that such an intervention could harm the relationship between the applicants and their sources of information, and dissuade other journalists or officials from raising the alarm about misconduct within public authorities. Given the importance of the protection of journalistic sources, the Court held that there had been a violation of Article 10.[139]

[139] (n 137).

4. General Principles Established from Case-Law

4.1. Introduction

The case-law of the ECtHR on the protection of journalistic sources clearly displays the fortifying protection which the Court affords. It does not tolerate any unnecessary interference with this right under Article 10 as it is fully aware of the importance of journalistic sources and the negative consequences of measures which seek to disclose them.

Through its judgements, the Court has further clarified and developed the extent of the protection it provides. This section analyses the main general principles which have been established from the case-law on the protection of journalistic sources to give a more profound understanding of the protection the Court is willing to offer and whether it is absolute or not.

4.2. Order to Disclose Sources

From case-law, we have seen a number of cases against States on orders to journalists to divulge their journalistic sources. Through its judgements, the Court has established a number of principles on this issue. Primarily, it emphasised that a disclosure order itself restricts the right to freedom of expression. Pressure on journalists by public authorities to disclose information about their journalistic sources constitutes a restriction on their ability to freely obtain and impart information to the public about issues of public interest.[140]

The Court stresses the chilling effect that disclosure orders may constitute,[141] especially in cases where journalists are seen to be assisting the authorities in identifying a

[140] (n 1).
[141] (n 1).

source.[142] Disclosure orders might discourage and stop persons who possess knowledge or information from passing it on to journalists out of fear of being identified,[143] thus threatening the very foundations of freedom of expression under Article 10. In the Goodwin case, the Court also stated that certain situations require a 'negative right'[144] under Article 10. Negative rights are rights which oblige inaction and should not be interfered with, while positive rights are rights which require action from others and the state. In this case, the negative right enabled journalists to not be coerced into providing any information or declaring an opinion.

Moreover, the obligatory handover of journalists' research material has the potential to cause a chilling effect on their exercise of journalistic freedom of expression.[145] In the Voskil case, the Court pointed out that far-reaching methods such as detention to compel journalists to disclose their sources could also discourage persons who hold important information from sharing it with journalists.[146]

In light of the importance of journalistic sources, the Court makes it clear that, for a disclosure order to be justified, it has to be outweighed by an overriding requirement, and must be limited to exceptional circumstances.[147] Such situations include a serious threat to national security, prevention of crime, and in cases where the disclosure of a journalistic source might lead to the liberation of an innocent prisoner.[148] Moreover, the Court has reiterated several times that the limitation on the non-disclosure of journalistic sources must be thoroughly scrutinised by the Court.[149]

Disclosure orders might cause harm to the reputation of media houses which have been ordered to disclose their sources, especially in the eyes of potential sources who might be discouraged from reaching out to the journalists of such media houses, possibly also

[142] (n 69).
[143] (n 1).
[144] (n 1).
[145] (n 57).
[146] (n 65).
[147] (n 1).
[148] (n 1).
[149] (n 1).

causing harm to the general public who is interested in receiving news derived from anonymous sources.[150] Furthermore, the Court holds that disclosure orders which have not been enforced might also cause harm.[151]

The Court has even stated that, before issuing an order to journalists to submit material which might potentially disclose the identity of a source, the authorities should conduct an independent review to establish whether a concern in the public's interest outweighs the principle of protection of journalistic sources, thus preventing the authorities from disclosing a source unnecessarily.[152]

The Court has additionally established that the conduct of a source should not be a factor that determines whether a disclosure order should be made or not, but should only act as a factor during the balancing exercise which is required under Article 10.[153] Moreover, in cases where the article in question is based on fabricated documents or inaccurate information which the source has produced, the Court does not consider this element to be a factor in deciding whether a disclosure order is justifiable or not, and what might be considered is the conduct of the journalist to verify the information before publishing it; however, due to the special principles of the protection of journalistic sources, the journalist's conduct could never be a decisive element in the case.[154]

From the cases analysed in the preceding chapter, it has been established that the risk of damaging a business and the livelihood of a number of employees is not enough to justify an interference with the right to protect journalistic sources,[155] nor is the duty to provide a fair trial,[156] or to identify a state official who disclosed confidential information,[157] or disclosure to allow the exercise of a legal right.[158]

[150] (n 71).
[151] (n 71).
[152] (n 77).
[153] (n 71).
[154] (n 71).
[155] (n 1).
[156] (n 65).
[157] (n 85).
[158] (n 71).

4.2.1 Order to Give Evidence

National Courts ordering journalists to testify against their sources is another manifestation of disclosure orders. Even though such an order is not direct, the Court still considers that the possible consequences which may arise from such orders are of the same nature as those of direct orders to disclose sources; thus, the general principles developed throughout cases on disclosure orders are also applicable to these cases. On the other hand, the Court has also remarked that, in such cases, public perception of the protection of journalistic sources might not be affected as much as in direct orders; however, this is not enough to justify coercing a journalist into testifying.[159]

The Court has also highlighted that it is not sufficient for Governments to argue that the criminal investigation would not advance without such measures.[160] In Voskuil, the Court stated that such a disclosure order cannot be justified to ensure a fair trial, especially considering that, in this case, the Domestic Courts still managed to consider the merits of the case through the evidence of other witnesses.[161]

In the Becker case, the Court took into consideration the gravity of the offence which the source had committed, and whether the applicant's refusal to testify and disclose her source had hindered the investigation into the case during the proceedings against the source to establish the importance of the applicant's evidence.[162]

4.3. Searches & Seizures

In its judgements, the Court makes it clear that searches at journalists' homes and workplace constitute an interference with their rights which are guaranteed under

[159] (n 90).
[160] (n 97).
[161] (n 65).
[162] (n 90).

Article 10(1),[163] and that such measures are a threat to their profession.[164] Even more so are searches which are conducted by authorities to discover the identity of a journalistic source.[165] It has emphasised that search measures aimed to establish the identity of a source are considered to be more severe than orders to disclose the identity of a source, and even if the searches do not yield any results, their purpose still stands. This is because, when investigators enter a journalist's workspace containing all sorts of journalistic materials unannounced and with a search warrant, they are automatically bestowed with extensive investigative powers which give them the accessibility to all the documents which the journalist holds.[166] Thus, other sources unrelated to the case in question would also be at risk of being disclosed. As the Court states, cases related to search and seizures affect the protection of journalistic sources more than the measures which were applied in the Goodwin case.[167]

Seizures to identify journalistic sources are also criticised by the Court, especially in cases where the authorities extract data from journalists' computers through for example an insertion of a USB stick[168] as this approach gives them access to all the information held by the journalist, even that which is unrelated to the case.[169] These far-reaching methods might intimidate other journalists from writing articles which are of public interest, but which might ruffle the authorities' feathers;[170] moreover, potential sources might be dissuaded from providing journalists with significant information out of fear of being identified.

The Court emphasises that, before issuing search and seizure orders, they should be primarily reviewed by an independent body. Even in urgent orders, a review should be undertaken at least before the retrieval and examination of the seized material in order to establish whether there are any potential risks to the confidentiality of sources, and

[163] (n 51).
[164] (n 121).
[165] (n 51).
[166] (n 51).
[167] (n 101).
[168] (n 127).
[169] (n 135).
[170] (n 135).

in the event that there are, it should be established whether the specific circumstances of the case override the protection of journalistic sources.[171] However, such measures should only be considered as a last resort as they restrict journalistic freedom of expression.[172]

On the other hand, the Court approved of the search conducted by the authorities in the Stichting case as they had returned all the seized items, and destroyed all evidence which was unrelated to the case, thus eliminating the risk of disclosing other sources. Therefore, when the investigation is done in a manner which falls within the parameters of Article 10, the Court is willing to justify it.[173]

Despite this, before accusing the Government of interfering with the right of a journalist under Article 10 through measures of search and seizure, the Court expects the Government to demonstrate that, without the use of such measures, the national authorities would have been unable to discover the possible breach in question and the concealment by the applicant journalist.[174]

4.3.1. Search Warrants

Search warrants are a crucial element of search and seizure orders. The wording of the search warrant is pivotal for the Court in its analysis as broad wording grants the investigators extensive powers[175] which allow them to search for more than just material related to the case. Therefore, in the opinion of the Court, cases which involve search warrants written in vague terms, seeking to identify a journalistic source, are considered much more drastic[176] as investigators would have access to all the documentation held by the journalist.[177]

[171] (n 77).
[172] (n 121).
[173] (n 131).
[174] (n 101).
[175] (n 127).
[176] (n 42).
[177] (n 101).

4.4. Surveillance

The element of surveillance was discussed by the Court in the Telegraaf Media[178] case, where journalists were targeted by Government Agents with special powers, aiming to identify the provenance of the journalists' information. The Court referred to previous cases[179] in which it had established that abuse could easily occur during measures of secret surveillance which could result in harmful consequences for the democracy of a society; thus, it is important for a State to have a judge or an independent body with supervisory control that could act as a safeguard against any abuses.

In the Telegraaf case, the Court found that the Dutch law did not provide such safeguards against surveillance powers over journalists because there was no independent body with a function to scrutinise the measures prior to being conducted. Moreover, reviews after the surveillance occurs are futile as the Court stated that, once the anonymity of the sources is destroyed through surveillance, it cannot be restored.[180]

4.5. The Traditional Source

The Court's decision in the Nordisk Film case distinguished between a source in the 'traditional sense' and a non-traditional source. In the case, it was established that persons who pass on information to journalists without being aware that they are doing so, or are recorded without their consent, are not considered to be sources in the traditional sense.[181]

The traditional sense of a source is defined in Recommendation No. R (2000) 7.[182] A source in the traditional sense is a person who is fully aware that they are talking to a

[178] (n 85).
[179] *Klass and Others v. Germany* App no 5029/71 (ECHR 6 September 1978).
[180] (n 85).
[181] (n 57).
[182] (n 21).

journalist about public interest affairs, and has been assured that their identity would remain concealed.[183]

In a later case, the Court remarked that, when the source is not the traditional type due to the circumstances, a disclosure order to hand over original journalistic material might still constitute a chilling effect on the freedom of expression of journalists.[184]

4.6. The Degree of Protection

The degree of protection afforded to journalists' right to not disclose the identity of their sources might vary between cases, especially where the source is not in the traditional sense. In such cases, the Court has established that the degree of protection of journalists' right to protect the identity of their sources cannot reach the same level as that of cases concerning normal sources, thus the level of protection is reduced for the non-traditional sources. This is because journalistic protection, in the words of the Court, is 'two-fold' because it does not only concern the journalist, but also the source who passed on information of public interest to the journalist.[185]

This variation in the degree of protection is also based on the motivation of the source, as established in the Stichting case. In this case, the source was afforded the same level of protection as the source of the Goodwin case because the motivation for reaching out to the journalist was to seek publicity.[186]

Moreover, in the Becker case, the degree of protection was reduced from the usual protection afforded to journalists. It was based not only on the source's malicious motivation, but also on the fact that the source's identity was already known to the investigative authorities.[187]

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[183] (n 57).
[184] (n 131).
[185] (n 57).
[186] (n 131).
[187] (n 90).

4.7. The Motivation of the Source

As aforementioned, the motivation for a person contacting a journalist and acting as a source could influence the degree of protection which is bestowed by the Court under Article 10 on a journalist. However, a journalist's protection cannot be automatically removed because the motivation of the source is malicious. If the purpose of the source is to exploit a journalist's profession for their own benefit, the degree of protection would be lowered.[188]

In cases where the degree of protection was lowered because it was clear that the motivation of the source was corrupt, the Court has stated that public perception of the principle of non-disclosure of journalistic sources might not be negatively affected due to the circumstance of the case. Nonetheless, the misconduct of the source should never be the decisive factor which influences whether a disclosure order should be made or not. It should only be considered as one of the factors to be deliberated during the balancing exercise prescribed under Article 10(2). Nevertheless, there might still be circumstances where the severity of the source's conduct, backed with a high degree of certainty, might constitute a relevant and sufficient reason for a disclosure order.[189]

4.8. Exceptional Cases

Out of the seventeen judgements and decisions, the Court did not find a violation of Article 10 in only two cases, namely, Nordisk Film and Stichting. These exceptional cases both concern issues of a serious criminal nature and non-traditional sources. What distinguishes them from the rest of the cases is the fact that, in both cases, the investigative authorities did not abuse their investigative power, and limited their power to the serious case in question and the offenders.

[188] (n 90).
[189] (n 71).

In Nordisk Film, there were two groups of sources, those who were considered by the Court as non-traditional as they were unaware that they were assisting a journalist, and the group who were fully aware and were assured by the journalist that their identity would remain concealed. The offenders of the case were the non-traditional sources, thus reducing the degree of protection. Moreover, the Domestic Courts only ordered a limited handover of the research material on the non-traditional sources, while the identity of the traditional sources was to remain withheld; thus, the Court did not consider this to be an order to disclose sources. The Court also appreciated the fact that the authorities did not resort to other drastic measures to get the information they wanted.[190]

The topic of the case was paedophilia, a very serious criminal and sensitive topic, and the victims were children; hence, the Court also considered the obligations of the Contracting States under Article 1 in conjunction with Article 3 of the Convention. After extensive examination, the Court decided that the application was inadmissible.[191]

The case of Stichting is related to a series of bomb attacks. The source's motivation played a primary role in the Court's final decision. The source's motivation for contacting the applicant journalist was to seek publicity and excuse his criminal conduct. This thus led the Court to refuse to offer the protection it usually bestows on traditional journalistic sources. Furthermore, the investigating authorities had destroyed all the material they had seized from the journalist which was unrelated to the case; hence, other journalistic sources were not at risk of being disclosed.[192]

[190] (n 57).
[191] (n 57).
[192] (n 131).

4.9. Concluding Remarks

In the Tillack case, the Court stated that the right of journalists to protect the identity of their sources is not a privilege, but it is afforded to them by right to information, regardless of the conduct of their sources.[193] This is taken very seriously by the Court, as seen throughout its case-law, where it firmly protects this journalistic right under Article 10.

The Court's judgements on the protection of journalistic sources are assisted by the instruments which the Committee of Ministers and the Parliamentary Assembly have amassed to guide the Court and the Member States in safeguarding this journalistic right. Moreover, through its case-law, the Court established further significant principles, including the interfering and chilling effect that disclosure orders constitute to the right of freedom of expression, searches and seizures are seen as more drastic measures than disclosure orders, not every person who acts as a source is automatically considered to be a traditional source by the Court, and how the motive of the source could affect the level of protection granted by the Court. Furthermore, there have only been very few exceptional cases where the Court, after extensive examination, did not find a violation of Article 10, thus demonstrating the willingness of the Court to protect journalistic sources and the limited sphere of possible limitations to freedom of expression.

[193] (n 2).

5. Analysis of the Protection of Journalistic Sources under Maltese Legislation

5.1. Introduction

After the extensive analysis of the protection of the confidentiality of journalistic sources at European level, the focus is now on the protection of the right of freedom of expression in Malta. This right is relatively new as, prior to 1996, journalistic sources had no protection at all in terms of ordinary law. In recent years, there has been legal reformation, aiming to improve the protection of media freedom in Malta; however, the protection of journalistic sources in Malta remained more or less unchanged.

5.2. Maltese Legislation on the Protection of Journalistic Sources

5.2.1. The Press Act

The amendments to the Press Act of 1996[194] introduced the first provision for the protection of the confidentiality of journalistic sources in Malta. Before 1996, journalistic sources were not protected, and the authorities could order journalists to disclose their sources. The addition of Article 46 to the Act did not provide an absolute privilege to journalists' right to protect the identity of their sources as it was only granted to advocates and legal procurators. Journalists on the other hand were granted a qualified privilege; however, there are certain circumstances where journalists enjoy no privilege whatsoever, much like the pre-1996 amendments.[195]

Moreover, Article 46 of the Act only granted the protection of journalistic sources to authors, editors, and publishers, and it never specifically mentioned journalists.

[194] Press Act, Chapter 248 of the Laws of Malta.
[195] Kevin Aquilina, 'Protection of Journalistic Sources in Maltese Law: An Appraisal from the Viewpoint 1 of the European Convention of Human Rights' (2011) International Journal of Public Law and Policy.

However, Prof. Kevin Aquilina suggests that the term 'authors' might refer to journalists.[196]

Under Article 46 of the Press Act, for a source to be disclosed, the circumstances must satisfy the three tests, namely, the disclosure must be really necessary, it must have one legitimate aim which is listed in Article 46, and the reason for disclosure must outweigh the requirement of the protection of journalistic sources in a democratic society.[197]

5.2.2. Media and the Defamation Act

In 2018, the Press Act was overhauled by the Media and Defamation Act[198] that established a new updated legal framework for media law, defamation, libel, and slander under Maltese law. The new Act introduced significant legal changes; however, the provisions for the protection of journalistic sources remained practically unchanged.

The protection of journalistic sources is addressed in Articles 22[199] and 23.[200] When comparing the wording of Article 22 to that of Article 46 of the repealed Press Act, it can be noticed that the basis of the new provisions is nearly identical to the provisions of the Press Act. The main difference is the inclusion of 'operator of a website',[201] with the persons who are granted the right to not disclose their sources, thus expanding the protection of journalistic sources to online platforms and not merely traditional news media.

[196] ibid 195.
[197] (n 195).
[198] Media and Defamation Act.
[199] Art. 22 of the Media and Defamation Act.
[200] Art. 23 of the Media and Defamation Act.
[201] (n 199).

5.2.3. European Convention Act

In 1987, Malta incorporated the European Convention on Human Rights and Fundamental Freedoms in its national legislation.[202] The provisions of the Convention were made enforceable under the European Convention Act found in Chapter 319 of the Laws of Malta.[203] Therefore, the protection of journalistic sources under Article 10 ECHR is also applicable in Malta, and protects journalists from being compelled to reveal their journalistic sources. This creates an additional international security to journalists as it also enables them to institute a human rights action before the Maltese Courts to protect their right under Article 10, as well as a recourse to the European Court of Human Rights if they feel that the Maltese Courts failed to safeguard their right. The judgements of the European Court are also influential on the Maltese Courts, and its established principles are usually selected and applied by the Maltese Court to national legislation.[204]

5.2.4. Legal Exceptions to the Protection of Journalistic Sources

Under Maltese Law, there are other Acts which contain lawful exceptions to the protection of journalistic sources,[205] including the Official Secret Act which contains three provisions. First, Article 13 forbids the disclosure of documentation regarding national security defence or international standards without the permission of lawful authority, and persons who hold such documents must return them if requested.[206] Thus, journalists cannot publish reports on the national security, and by law they must return any documentation on the matter which they hold if requested by the authorities. Article 19 authorises magistrates to grant a search warrant and the

[202] Dr Tonio Borg 'The Constitution and the European Convention on Human Rights – Conflicts, similarities and contrasts' (2020) GħSL Online 71 Law Journal <http://lawjournal.ghsl.org/viewer/321/download.pdf> Accessed 27 July 2021.
[203] European Convention Act (Chapter 319 of the Laws of Malta).
[204] Judge Giovanni Bonello, 'Malta's Debts to the European Court of Human Rights' (2014) GħSL Online 71 Law Journal <http://lawjournal.ghsl.org/viewer/85/download.pdf> Accessed 27 July 2021.
[205] (n 195).
[206] Art. 13 of the Official Secret Act.

Superintendent of Police, acting in the capacity of a magistrate, to give a search warrant to police officers in the interest of the State in urgent cases of emergency.[207] These search warrants might also include journalist's work place or offices. Finally, Article 22 orders any person including journalist to assist police officers in their investigation on an offence if requested by giving any information which they hold. If a person fails to comply, it would constitute a criminal offence.[208]

This legal exception could possibly infringe Article 10 if not implemented properly. The principles which have come out of the analysed cases declare that the search warrant must be clearly issued in a manner which does not grant extensive powers to the investigators as this constitutes a violation of Article 10 and reviewed by an independent body. The search must be conducted within the remits of Article 10, namely it must not put sources unrelated to the case in risk of being identified. Moreover, these search measures must be measures of last resort.

Under the Security Service Act, the Minister responsible for security service is allowed to warrant the 'entry on or interference with property', as stated in Article 6(1), and intercept or interfere radio or telephone communications under Article 6(2).[209] This constitutes a possible risk over the confidentiality of journalistic sources as this mechanism hinders the right of journalist to protect their journalistic sources. Additionally, the Prevention of Money Laundering Act authorises the disclosure of journalistic sources under Article 4 which states that an Attorney General has the power to issue an investigation order and 'grant access' to searches and seizures of the home of any person suspected of a criminal offence and in possession of material valuable to the investigation.[210] Journalists and their sources are not prohibited from this provision; consequently they could have their homes and workplace searched, and their material seized under this provision if such order is issued against them. Moreover, Article 30A authorises the Financial Intelligence Analysis Unit to demand of 'any person, authority

[207] Art. 19 of the Official Secret Act.
[208] Art. 22 of the Official Secret Act.
[209] Art. 6 of the Security Service Act.
[210] Art. 4 of the Prevention and Money Laundering Act.

of entity'[211] any information it requires about its duties. Article 38 of the Police Act authorises the Minister responsible to issue codes which allow police officers to conduct searches and seizures on persons and their premises.[212] This Article could be used to search journalist's property.

The Criminal Code stipulates that, for crimes committed or which are punishable under the Press Act, the authorities have no right to enter, search, or seize from premises without a warrant issued by a Magistrate, nor can they make an arrest.[213] Moreover, it states that 'those persons who are by law bound to secrecy respecting circumstances on which evidence is required' shall not be compelled to disclose information on the basis of professional secrecy.[214] It authorises the police to seize computers and the information they may contain,[215] and states that, failing to comply with police orders to disclose information[216] and hand over documents[217] constitutes a criminal offence. It additionally authorises the punishment of those who fail their legal duty to disclose information about crimes which might affect the safety of the State. This provision also extends to journalists who have a duty to disclose any information which they hold including the identity of the source.[218]

Instituting a criminal action against journalists for exercising their right of protecting the identity of journalistic sources as stated in the Criminal Code, might constitute and infringement to Article 10. Given that in the Maltese Criminal Code journalism is not clearly listed as a profession which requires professional secrecy, puts journalists at risk of having the documentation which they hold seized by the Police or of being required to surrender documents and to disclose information.

[211] Art. 30A of the Prevention and Money Laundering Act.
[212] Art. 38 of the Police Act.
[213] Art. 355E of the Criminal Code.
[214] Art. 642 of the Criminal Code.
[215] Art. 355Q of the Criminal Code.
[216] Art. 355AD(3) of the Criminal Code.
[217] Art. 335AD(4) of the Criminal Code.
[218] Art. 61 of the Criminal Code.

Article 588 of the Code of Organisation and Civil Procedure[219] lists professionals who shall by law enjoy absolute or qualified privilege of non-disclosure of sources in civil proceedings. However, journalists do not feature in the list,[220] thus leaving them without any protection over their sources in civil proceedings.

5.3. Cases

5.3.1. Carmel Cacopardo v Minister of Works et

This case took place in 1984 prior to the enactment of the Press Act; thus, journalists enjoyed no protection at all of their sources. Mr. Cacopardo was a government official who lost his job after writing articles of a political nature in Maltese newspapers. His dismissal was based on the fact that, as a public official, he should not have written such articles. He sued the Minister of Works and the Director of Works on the basis that his expulsion from work was discriminatory in nature.[221]

During the proceedings, the editor of a Maltese newspaper 'It-Torca' was requested to divulge the identity of the author who had written an article in his newspaper. The editor asked the Court to be granted immunity from doing so on the basis of his profession; however, the Court refused, and insisted that he must follow its orders. The editor's appeal to the Constitutional Court was dismissed on the basis that he was a witness in the concerned proceedings and not an actual party; hence, he was ordered to reveal his source.[222]

5.3.2. Lindsey Gambin vs Daphne Caruana Galizia

[219] Art. 588 of the Code of Organization and Civil Procedure.
[220] (n 195).
[221] Carmel Cacopardo vs Ministru tax-xogholijiet u Agent Direttur tax-xogholijiet, Constitutional Court 25th March 1985.
[222] ibid 221.

In this case, the Courts of Malta were faced with the question whether an online blogger qualified as a journalist; thus, they had to also consider whether such authors have a right to protect the identity of their sources or not.[223]

In this case, the defendant, Mrs. Caruana Galizia, wrote an article in her blog where she claimed that the plaintiff, Mrs. Gambin, was having an affair with a member of parliament. Mrs. Gambin instituted libel proceedings against the journalist. During the proceedings, the journalist was ordered to disclose the identity of the source who had forwarded to her the information about the alleged affair. Mrs. Caruana Galizia refused to do so, relying on her right as a journalist to protect the identities of her journalistic sources. Here, an issue was raised on whether an online blogger who did not work for a newsroom qualified for protection under Article 46 of the Press Act or not.[224]

The Court took into consideration Article 46, and determined that, under this Article, the defendant was not protected as her profession as a blogger did not qualify her as a journalist, and her publications were electronic, and not the traditional newspaper or broadcast, which were protected under Article 46. None the less, it also took into consideration Recommendation No. R (2000) 7 of the Committee of Ministers, and analysed its interpretation of the term 'journalist' as a person, both natural or legal, who passes on information to the public through mass information channels, thus including also bloggers. This thus means that, under the Recommendation, bloggers are entitled to the right of the protection of their journalistic sources.[225]

It also noted that, as an electronic news portal, a blog is protected under Article 2 of the Press Act as the blog by Mrs. Caruana Galizia satisfied the criteria established under this Article, namely, publishing news, notices, information, comments, and observations, it was published to be sold or distributed, and it was published regularly. Therefore, the blog in question was considered as a news portal under Article 2. The Court further took into consideration the ECHR case of Voskuil v. The Netherlands where the European

[223] Lindsey Gambin et al vs Daphne Caruana Galizia, Court of Magistrates, Magistrate Francesco Depasquale, 17 March 2016.
[224] ibid 223.
[225] (n 223).

Court emphasised the importance of journalistic sources for press freedom in a democratic society. In conclusion, the Court held that the defendant, even as a blogger, had a right under Article 46 of the Press Act to refuse to disclose the identity of her source of information.[226]

5.3.3. Il-Pulizija vs Dr Jason Azzopardi

In the recent Dr. Jason Azzopardi case,[227] for the very first time, the Maltese Court declared the importance of journalistic sources, and quoted the ECtHR from its Nordisk Film & TV A/S V. Denmark[228] judgement, where it reaffirmed the importance of the protection of journalistic sources, declaring that 'protection of journalistic sources is one of the basic conditions for press freedom'.

5.3.4. Times of Malta and MFSA

This case is not a Court case, but the circumstances raised an alert with the Council of Europe's platform to promote the protection of journalism and safety of journalists. The circumstances surround a Maltese newsroom, the Times of Malta, after it received an official letter from the Malta Financial Services Authority (MFSA), demanding the disclosure of a source who had passed on information about a plan for the takeover of the Manoel Island project. The newsroom refused to do so on the basis of the importance of journalistic sources and the media's duty to report issues of public interest.[229]

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[226] (n 223).

[227] Il-Pulizija vs Dr Jason Azzopardi, Court of Magistrates (Court of Criminal Judicature), 15th April, 2016, 4/2016.

[228] (n 57).

[229] 'MFSA wants Times to disclose sources on planned takeover of Manoel Island' (*Times of Malta* November 9th 2018) <https://timesofmalta.com/articles/view/mfsa-wants-times-to-disclose-sources-on-planned-takeover-of-manoel.693832> Accessed 29 July 2021.

The Council of Europe raised an alarm on this issue, which was later resolved after the MFSA withdrew the request for the Times of Malta to disclose its sources.[230] This is the only alarm out of nine alerts on Malta which has been resolved.

5.4. Concluding Remarks

In 1996, the Press Act was the catalyst for the protection of journalistic sources in Malta through Article 46. However, this provision never specifically mentioned journalists, but referred to them under the term 'authors'. The Press Act was overhauled by the Media and Defamation Act of 2018, which revised Maltese legislation on the press in Malta. Nevertheless, the new Act did not make any major changes to the protection of journalistic sources which was established under the Press Act, but merely expanded the protection to online news platforms. Moreover, the European Convention Act gives a double protection to journalists as it bestows on them the firm protection of the Convention and the ECtHR.

The law of Malta also provides for several legal exceptions to the protection of journalistic sources. These could be found in the Official Secret Act, Security Service Act, Prevention and Money Laundering Act, the Criminal Code, and the Code of Organisation and Civil Procedure.

It is clear from the Carmel Cacopardo case that, before the Press Act of 1996, journalistic sources had no protection at all, nor did journalists have a right to refuse to disclose their sources. From the Daphne Caruana Galizia case, it could be observed that the Court became more open and considerate to the right of journalists, including bloggers, to refuse to divulge the identity of their sources, and it established that bloggers are protected as much as traditional journalists. Moreover, the recent case of the Times of Malta shows the influential effect of the Council of Europe's platform to promote the

[230] Elizabeth De Gaetano, 'World Press Freedom Day: Council of Europe platform highlights threats to media in Malta' (*The Shift* 3rd May 2021) <https://theshiftnews.com/2021/05/03/world-press-freedom-day-council-of-europe-report-highlights-threats-to-media-in-malta/> Accessed 29 July 2021.

protection of journalism and safety of journalists since the alert it raised on the situation potentially played a part in the withdrawal of MFSA's request.

6. Concluding Remarks

The analysis of this dissertation sought to determine whether the protection of journalistic sources under Article 10 is absolute or not. The direct answer to the research question, after analysing all the related material on the protection of journalistic sources under the European Convention and the case law of the ECtHR, is that no, it is not absolute. However, the Court grants a very high level of protection and it takes extreme circumstances for the Court to lower its standard protection or to not grant it at all.

Most of the case law demonstrates the Court's high level of protection; only a small minority, and after extensive analysis, has the Court decided to lower its protection over journalistic sources. These extreme circumstances include cases where a journalist acted undercover and his sources neither knew they were talking to a journalist nor gave their consent to be part of the journalist's article, so they were not considered to be the traditional type of journalistic sources, and in cases where the source's main motivation for giving information to a journalist was malicious and the authorities' investigative measures were reasonable and there was no risk of revealing the identity of other sources who had nothing to do with the case.[231]

From the analysis of the case law emerged the main general principles that the Court has established over the years in relation to journalistic sources. It has warned of the chilling effect that disclosure orders and orders to give evidence can have on potential journalistic sources,[232] who may be deterred from contacting journalists after seeing the letter assisting authorities in identifying their sources.[233] Such orders are only justified where their purpose outweighs the public interest in protecting journalistic sources and in exceptional circumstances.

[231] (n 131).
[232] (n 1).
[233] (n 42).

In the judgments it has delivered, the Court has held that search and seizure measures are more harmful to the protection of journalistic sources and to the freedom of expression than disclosure orders.[234] Such measures threaten the profession of journalism. Moreover, searches perusing the identity of a source and defeat their purpose are still considered harmful by the Court.[235] Search warrants issued by national authorities are also of critical importance to the Court, as ill-considered search warrants could give authorities broad powers to examine all documents in a journalist's possession, which may lead to the identification of other sources unrelated to the case at hand.[236] Surveillance measures have not been discussed profoundly as the issue was only raised in the Telegraaf Media case, however; the Court observed that such measures are prone to abuse which could hamper the democracy of a society if it is not done properly under the supervision of a judge or an independent body.[237]

In addition, the Court has also distinguished between the traditional source, to whom it affords the greatest possible protection, and the non-traditional sources, for whom, because of the particular circumstances of the case, including cases where the source does not know he is speaking to a journalist, the protection afforded by the Court is lowered.[238] Thus, it has also been noted that the degree of protection shifts depending on the particular circumstances of the case. The motivation of the source also affects the protection afforded, but the Court has made it clear that motivation alone cannot be the determining factor in determining whether or not an interference is justified.[239]

It also emerged from the analysis that Maltese legislation on the protection of journalistic sources is still patchy, especially when compared to the comprehensive protection offered by the ECtHR. The introduction of the protection of journalistic sources in Maltese legislation is relatively recent and was not properly adapted in the recent update of the legal framework of the Media Act. Rather, it was left the same,

[234] (n 51).
[235] (n 51)
[236] (n 131).
[237] (n 85).
[238] (n 57).
[239] (n 71).

with only a few minor updates that extended the protection to online platforms.[240] However, journalists in Malta have the privilege of double protection through their right to petition to the ECtHR if they feel that their right to protect the identity of their sources is being violated.[241]

The Court understands the crucial role that journalistic sources have in the functioning of freedom of expression in a democratic society. It recognises that without journalistic sources, the duty of journalists to inform and the public's right to be informed, as set forth in Article 10, would be impeded. It is clear from the case law of the Court and the instrument published by the Council of Europe on this subject that the application of the right of journalists not to disclose their journalistic sources is very restrictive.

In conclusion, no the protection of journalistic sources under Article 10 of the European Convention is not absolute, but an interference with this right is only acceptable in particular circumstances and after a thorough balancing of the conflicting parties, as the ECtHR has been very restrictive in its application of this right in order to protect freedom of the press within its Member States.

[240] (n 198).
[241] (n 201).

Bibliography

Council of Europe Publications

Bychawska-Siniarska D, *'Protecting The Right To Freedom Of Expression Under The European Convention On Human Rights: A Handbook For Legal Practitioners'* (Council of Europe 2017).

Journals Articles

Aquilina K, *'Protection Of Journalistic Sources In Maltese Law: An Appraisal From The Viewpoint Of The European Convention Of Human Rights'* (2011) International Journal of Public Law and Policy

Bonello G, *'Malta's Debts to the European Court of Human Rights'* (2014) GħSL Online 71 Law Journal http://lawjournal.ghsl.org/viewer/85/download.pdf

Borg T, *'The Constitution and the European Convention on Human Rights – conflicts, similarities and contrasts'* (2020) GħSL Online 71 Law Journal http://lawjournal.ghsl.org/viewer/321/download.pdf

Kharel A, *'Doctrinal Legal Research'* (2018) SSRN Electronic Journal

Nash S, *'Freedom Of Expression, Disclosure Of Journalists' Sources And The European Court Of Human Rights: Goodwin V United Kingdom'* (1997) 1 The International Journal of Evidence & Proof.

Ress G, *'The Effect Of Decisions And Judgments Of The European Court Of Human Rights In The Domestic Legal Order*' (2005) 40 Texas International Law Journal.

Savla S, *'Company Informants And Disclosure Of Journalistic Sources: Goodwin V United Kingdom*' (1997) 4 Journal of Financial Crime.

Online Resources

De Gaetano E, '*World Press Freedom Day: Council of Europe platform highlights threats to media in Malta'* (*The Shift* 3rd May 2021) <https://theshiftnews.com/2021/05/03/world-press-freedom-day-council-of-europe-report-highlights-threats-to-media-in-malta/> accessed 29th July 2021.

Times of Malta, '*MFSA wants Times to disclose sources on planned takeover of Manoel Island'* (Times of Malta November 9th 2018) <

https://timesofmalta.com/articles/view/mfsa-wants-times-to-disclose-sources-on-planned-takeover-of-manoel.693832> Accessed 29th July 2021.